

18-2784-cv

**United States Court of Appeals
for the
Second Circuit**

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

— v. —

NEWARK ELECTRIC CORPORATION, NEWARK ELECTRIC 2.0, INC.,
COLACINO INDUSTRIES, INC.,

Respondents.

ON PETITION FOR REVIEW FOR ENFORCEMENT OF A DECISION
AND ORDER OF THE NATIONAL LABOR RELATIONS BOARD
IN NLRB CASE NO. 03-CA-088127

**JOINT APPENDIX
Volume I of II (Pages A-1 to A-258)**

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Litigation Branch
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United States Government

NATIONAL LABOR RELATIONS BOARD

OFFICE OF THE GENERAL COUNSEL

Washington, D.C. 20570

October 30, 2018

Catherine O'Hagan Wolfe
Clerk of the Court
United States Court of Appeals
for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square, Room 1802
New York, NY 10007

Re: *NLRB v. Newark Electric Corporation, Newark Electric 2.0, Inc., and
Colacino Industries, Inc., Newark, New York, a single employer
and alter egos*
2d Cir. No. 18-2784
Board Case No. 03-CA-088127

Dear Ms. O'Hagan Wolfe:

I am transmitting the Certified List of the contents of the Agency Record in
the above-captioned case.

Very truly yours,

/s/ Linda Dreeben
Linda Dreeben
Deputy Associate General Counsel
NATIONAL LABOR RELATIONS BOARD
1015 Half Street, SE
Washington, DC 20570
(202) 273-2960

Encls.

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

NATIONAL LABOR RELATIONS BOARD)	
)	
Petitioner)	No. 18-2784
)	
v.)	Board Case No.
)	03-CA-088127
NEWARK ELECTRIC CORPORATION,)	
NEWARK ELECTRIC 2.0, INC., AND)	
COLACINO INDUSTRIES, INC.,)	
NEWARK, NEW YORK, A SINGLE)	
EMPLOYER AND ALTER EGOS)	
)	
Respondent)	

CERTIFIED LIST OF THE NATIONAL LABOR RELATIONS BOARD

Pursuant to authority delegated in Section 102.115 of the National Labor Relations Board's Rules and Regulations, 29 C.F.R. § 102.115, I certify that the list below fully describes all documents, transcripts of testimony, exhibits, and other material constituting the record before the Board in Newark Electric Corporation Newark Electric 2.0, Inc., and Colacino Industries, Inc., Newark, New York, a single employer and alter egos, Case No. 03-CA-088127.

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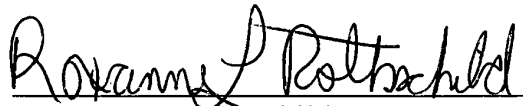
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A handwritten signature in black ink, appearing to read "Roxanne L. Rothschild", written over a horizontal line.

Roxanne L. Rothschild
Acting Executive Secretary
National Labor Relations Board
1015 Half Street, SE
Washington, DC 20570
(202) 273-2960

October 30, 2018

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

NATIONAL LABOR RELATIONS BOARD)	
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Petitioner)	No. 18-2784
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v.)	Board Case No.
)	03-CA-088127
NEWARK ELECTRIC CORPORATION,)	
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COLACINO INDUSTRIES, INC.,)	
NEWARK, NEW YORK, A SINGLE)	
EMPLOYER AND ALTER EGOS)	
)	
Respondent)	

CERTIFICATE OF SERVICE

I hereby certify that on October 30, 2018, I filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for Second Circuit by using CM/ECF system. I certify that the foregoing document was served on all parties or their counsel of record through the appellate CM/ECF system.

/s/ Linda Dreeben
 Linda Dreeben
 Deputy Associate General Counsel
 NATIONAL LABOR RELATIONS BOARD
 1015 Half Street, SE
 Washington, DC 20570

Dated at Washington, DC
this 30th day of October 2018

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Newark Electric Corp., Newark Electric 2.0, Inc., and Colacino Industries, Inc., and International Brotherhood of Electrical Workers, Local 840.
Case 03-CA-088127

July 31, 2018

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS MCFERRAN
AND KAPLAN

On March 26, 2015, the National Labor Relations Board issued a Decision and Order in this proceeding, which is reported at 362 NLRB No. 44. Thereafter, the Respondents filed a petition for review in the United States Court of Appeals for the District of Columbia Circuit.

Acting General Counsel Lafe E. Solomon issued the consolidated complaint in this case on May 30, 2013. On March 21, 2017, the United States Supreme Court issued its decision in *NLRB v. SW General, Inc. d/b/a Southwest Ambulance*, 580 U.S. ___, 137 S. Ct. 929 (2017), holding that, under the Federal Vacancies Reform Act of 1998, Solomon's authority to take action as Acting General Counsel ceased on January 5, 2011, after the President nominated him to be General Counsel. Thereafter, the court of appeals vacated the Board's Decision and Order and remanded this case for further proceedings consistent with the Supreme Court's decision.

The Board has delegated its authority in this proceeding to a three-member panel.

In view of the decision of the Supreme Court in *NLRB v. SW General*, supra, we have considered whether the complaint is valid and whether the complaint allegations are properly before the Board for decision. On August 14, 2017, then-General Counsel Richard F. Griffin Jr. issued a Notice of Ratification in this case that states, in relevant part,

The prosecution of this case commenced under the authority of Acting General Counsel Lafe E. Solomon during the period after his nomination on January 5, 2011, while his nomination was pending with the Senate, and before my confirmation on November 4, 2013.

On March 21, 2017, the United States Supreme Court held that Acting General Counsel Solomon's authority under the Federal Vacancies Reform Act (FVRA), 5 U.S.C. §§ 3345 et seq., ceased on January 5, 2011, when the President nominated Mr. Solomon for the position of General Counsel. *NLRB v. SW General, Inc.*, 580 U.S. ___, 137 S. Ct. 929 (March 21, 2017).

I was confirmed as General Counsel on November 4, 2013. After appropriate review and consultation with my staff, I have decided that the issuance of the complaint in this case and its continued prosecution are a proper exercise of the General Counsel's broad and unreviewable discretion under Section 3(d) of the Act. Congress provided the option of ratification by expressly exempting, pursuant to FVRA Section 3348(e)(1), "the General Counsel of the National Labor Relations Board" from the FVRA provisions that would otherwise preclude the ratification of certain actions of other persons found to have served in violation of the FVRA.

For the foregoing reasons, I hereby ratify the issuance and continued prosecution of the complaint.

In view of the independent decision of then-General Counsel Griffin to ratify the complaint and to continue prosecution in this matter, we find that the complaint allegations are properly before the Board for decision.

We have considered de novo the judge's decision¹ and the record in light of the exceptions and briefs. We have also considered the now-vacated Decision and Order, and we agree with the rationale set forth therein. Accordingly, we affirm the judge's rulings, findings² and conclusions and adopt his recommended Order to the extent and for the reasons stated in the Decision and Order reported at 362 NLRB No. 44 (2015), which is incorporated herein by reference. The Order, as further modified herein, is set forth in full below.³

¹ Administrative Law Judge Kenneth W. Chu was appointed at a time when the Board was without a quorum. See *NLRB v. Noel Canning*, 134 S. Ct. 2550 (2014). On July 18, 2014, in an abundance of caution and with a full complement of five Members, the Board ratified nunc pro tunc and expressly authorized the selection of Judge Chu to serve as an administrative law judge with this agency.

² The General Counsel and the Respondents filed statements of position on remand. The Order remanding the case to the Board states that the Respondents "may raise their laches argument on remand...." In their position statement, the Respondents assert that the allegations arising from the charges filed in Case 03-CA-088127 over 5 years ago should be dismissed based on the doctrine of laches. We reject the Respondents' defense of laches, which does not bar action by the Board, as a federal

government agency, to vindicate public rights. See *Entergy Mississippi, Inc.*, 361 NLRB 892, 893 fn. 5 (2014), *enfd.* in relevant part 810 F.3d 287 (5th Cir. 2015); *F. M. Transport, Inc.*, 302 NLRB 241 (1991).

³ In accordance with our decision in *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016), we shall modify the judge's recommended tax compensation and Social Security reporting remedy. In addition, in accordance with our recent decision in *King Soopers, Inc.*, 364 NLRB No. 93 (2016), *enfd.* in pertinent part 859 F.3d 23 (D.C. Cir. 2017), we shall amend the remedy to require the Respondent to compensate Anthony Blondell for his search-for-work and interim employment expenses regardless of whether those expenses exceed interim earnings. Search-for-work and interim employment expenses shall be calculated

ORDER

The National Labor Relations Board orders that the Respondents, Newark Electric Corporation, Newark Electric 2.0, Inc., and Colacino Industries, Inc., Newark, New York, a single employer and alter egos, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to honor the February 24, 2011 Letter of Assent C and the collective-bargaining agreement that is in effect from June 1, 2012, through May 31, 2015, between the IBEW, Local 840 and the Finger Lakes Chapter, NECA, which establishes the terms and conditions of employment of the Respondents' employees in the following appropriate bargaining unit during the term of the contract and any automatic extensions thereof:

All employees performing work, as set forth in Article II of the January 1, 2011 to May 31, 2012 agreement between the Union and the Finger Lakes, New York Chapter of NECA, and the June 1, 2012 to May 31, 2015 successor agreement between the Union and the Finger Lakes, New York Chapter of NECA, within the geographic area set forth in Article II of the same agreements.

(b) Failing and refusing to recognize and bargain with the Union as the exclusive collective-bargaining representative, within the meaning of Section 8(f), of the Respondents' employees in the appropriate unit during the term of their collective-bargaining agreement and any automatic extensions thereof.

(c) Repudiating and failing and refusing to apply to unit employees their collective-bargaining agreement since July 20, 2012, and to make payments to the fringe benefit funds under the collective-bargaining agreement and any automatic extensions thereof.

(d) Discharging or otherwise discriminating against employees because they form, join, or assist the IBEW, Local 840, or any other labor organization, or engage in protected concerted activities, to discourage employees from engaging in these activities.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Give full force and effect to the terms and conditions of employment provided in the collective-bargaining agreement with the Union, and any automatic renewal or extension of it.

(b) Make whole unit employees for any loss of earnings and other benefits resulting from the Respondents' failure to honor the terms of the agreement, in the manner set forth in the remedy section of the judge's decision as amended in the decision reported at 362 NLRB No. 44.

(c) Remit the fringe benefit funds payments that have become due and reimburse unit employees for any losses or expenses arising from the Respondents' failure to make the required payments, in the manner set forth in the amended remedy section of the decision reported at 362 NLRB No. 44.

(d) On request, bargain collectively in good faith with the Union as the exclusive representative of the employees in the appropriate bargaining unit during the term of the collective-bargaining agreement and any automatic extensions thereof.

(e) Within 14 days from the date of this Order, offer Anthony Blondell full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(f) Make Anthony Blondell whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the remedy section of the judge's decision as amended in the decision reported at 362 NLRB No. 44 and as further amended in this decision.

(g) Compensate each affected employee, including Anthony Blondell, for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file a report with the Regional Director for Region 3, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years for each employee.

(h) Within 14 days from the date of this Order, remove from their files any reference to the unlawful discharge of Anthony Blondell, and within 3 days thereafter, notify him in writing that this has been done and that the discharge will not be used against him in any way.

(i) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay and other

separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). We

shall modify the Order to reflect these remedial changes and we shall substitute a new notice to conform to the Order as modified.

NEWARK ELECTRIC CORP.

3

adjustments of monetary benefits due under the terms of this Order.

(j) Within 14 days after service by the Region, post at the Respondents' Newark, New York facilities copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by the Respondents' authorized representative, shall be posted by the Respondents and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondents customarily communicate with their employees by such means. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondents have gone out of business or closed the facilities involved in these proceedings, or sold the business or the facilities involved herein, the Respondents shall duplicate and mail, at their own expense, a copy of the notice to all current employees and former employees employed by the Respondents at any time since July 20, 2012.

(k) Within 21 days after service by the Region, file with the Regional Director for Region 3 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondents have taken to comply.

Dated, Washington, D.C. July 31, 2018

John F. Ring, Chairman

Lauren McFerran, Member

Marvin E. Kaplan, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX
NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT refuse to honor the February 24, 2011 Letter of Assent C and the collective-bargaining agreement with the Union that is in effect from June 1, 2012, through May 31, 2015, which establishes the terms and conditions of your employment in the following appropriate bargaining unit during the term of the contract and any automatic extensions thereof:

All employees performing work, as set forth in Article II of the January 1, 2011 to May 31, 2012 agreement between the Union and the Finger Lakes, New York Chapter of NECA, and the June 1, 2012 to May 31, 2015 successor agreement between the Union and the Finger Lakes, New York Chapter of NECA, within the geographic area set forth in Article II of the same agreements.

WE WILL NOT fail and refuse to recognize and bargain in good faith with the Union as your collective-bargaining representative during the term of the collective-bargaining agreement and any automatic extensions thereof.

WE WILL NOT repudiate and fail and refuse to apply to unit employees your collective-bargaining agreement since July 20, 2012, and to make payments to the fringe benefit funds under that agreement and any automatic extensions thereof.

WE WILL NOT discharge or otherwise discriminate against any of you for supporting the IBEW, Local 840, or any other labor organization, or engaging in protected concerted activities, to discourage you from engaging in these activities.

⁴ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the

United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

DECISIONS OF THE NATIONAL LABOR RELATIONS BOARD

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL give full force and effect to the collective-bargaining agreement effective from June 1, 2012, through May 31, 2015, and any automatic extensions thereof.

WE WILL make you whole for any losses you may have suffered as a result of our refusal to honor the terms of the collective-bargaining agreement.

WE WILL remit the fringe benefit funds payments that have become due and reimburse you for any losses or expenses arising from our failure to make the required payments.

WE WILL, on request, bargain in good faith with the Union as your exclusive collective-bargaining representative during the term of the collective-bargaining agreement.

WE WILL, within 14 days from the date of the Board's Order, offer Anthony Blondell full reinstatement to his former job or, if that job is no longer available, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Anthony Blondell whole for any loss of earnings and other benefits resulting from his discharge, less any net interim earnings, plus interest.

WE WILL compensate each affected employee, including Anthony Blondell, for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file with the Regional Director for Region 3, within 21 days of the date the amount of backpay is fixed, either

by agreement or Board order, a report allocating the backpay award to the appropriate calendar years for each employee.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharge of Anthony Blondell, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the discharge will not be used against him in any way.

NEWARK ELECTRIC CORP., NEWARK ELECTRIC
2.0, INC., AND COLACINO INDUSTRIES, INC.

The Board's decision can be found at www.nlr.gov/case/03-CA-088127 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half St. S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Newark Electric Corp., Newark Electric 2.0, Inc., and Colacino Industries, Inc., and International Brotherhood of Electrical Workers, Local 840.
Case 03-CA-088127

March 26, 2015

DECISION AND ORDER

BY MEMBERS MISCIMARRA, HIROZAWA,
AND MCFERRAN

On January 6, 2014, Administrative Law Judge Kenneth W. Chu issued the attached decision. The Respondents filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions as

¹ We correct the following error in the judge's decision. The judge found that at the time the letter of assent C was signed by Respondent Newark Electric, there were several union members employed by Newark Electric. The record reflects, however, that there were no union members employed by Newark Electric at that time. The Union's business manager, Michael Davis, testified that two employees were performing what later became bargaining unit work, and that they would have the opportunity to join the Union after completing a probationary period. This error does not affect our disposition of this case.

The Respondents have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

We reject the Respondents' argument that the complaint should be dismissed because the Board did not have a quorum at the time the complaint issued. Although subsequently the Supreme Court held unconstitutional the January 2012 appointments of three Board members in *NLRB v. Noel Canning*, 134 S.Ct. 2550 (2014), that decision does not affect the General Counsel's authority as an independent officer appointed by the President and confirmed by the Senate. The General Counsel's authority to investigate unfair labor practice charges and to issue and prosecute unfair labor practice complaints derives directly from the language of the Act, not from any power delegated by the Board. See 29 U.S.C. §§ 153(d) & 160(b); *Richardson Chemical Co.*, 222 NLRB 5, 6 (1976). Accordingly, the presence or absence of a valid Board quorum has no bearing on the General Counsel or his agent's prosecutorial authority in this matter. See *Pallet Companies, Inc.*, 361 NLRB No. 33, slip op. at 1 (2014).

We also reject the Respondents' alternative argument that Acting General Counsel Lafe Solomon was not properly appointed under either the Act or the Federal Vacancies Reform Act (Vacancies Act), 5 U.S.C. § 3345 *et seq.* The Acting General Counsel was properly appointed under the Vacancies Act, which provides an alternative to the specific procedures provided by the Act, and the complaint is not sub-

modified below, and to adopt the recommended Order as modified and set forth in full below.²

AMENDED CONCLUSIONS OF LAW

Substitute the following for Conclusions of Law 2 and 6.

2. At all material times, Respondents Colacino Industries, Newark Electric 2.0 and Newark Electric have had substantially identical management, operations, equipment, customers, and supervision, as well as common ownership and common control over labor relations.

6. The International Brotherhood of Electrical Workers, Local 840 (IBEW, Local 840) is a labor organization within the meaning of Section 2(5) of the Act, and upon signing the February 24, 2011 Letter of Assent C, became the exclusive collective-bargaining representative of all the Respondents' employees in the appropriate bargaining unit described below for the purposes of collective bargaining within the meaning of Section 8(f):

All employees performing work, as set forth in Article II of the January 1, 2011 to May 31, 2012 agreement between the Union and the Finger Lakes, New York Chapter of NECA, and the June 1, 2012 to May 31, 2015 successor agreement between the Union and the Finger Lakes, New York Chapter of NECA, within the geographic area set forth in Article II of the same agreements.

ject to attack based on the circumstances of his appointment. See *Huntington Ingalls Inc.*, 361 NLRB No. 64, slip op. at 2-3 fn. 8 (2014) (citing *Muffley v. Massey Energy Co.*, 547 F. Supp. 2d 536, 542-543 (S.D.W. Va. 2008), *affd.* 570 F.3d 534 (4th Cir. 2009) (upholding authorization of a 10(j) injunction proceeding by Acting General Counsel designated pursuant to the Vacancies Act)). We also find unpersuasive the Respondent's reliance on *Hooks v. Kitsap Tenant Support Services*, 2013 WL 4094344 (W.D. Wash. Aug. 13, 2013), for the reasons given in *Huntington Ingalls*, *supra*.

Last, in adopting the conclusion that Respondents Colacino Industries and Newark Electric are alter egos, we find it unnecessary to pass on the judge's finding that Colacino Industries and Newark Electric had substantially identical business purposes. See *Liberty Source W, LLC*, 344 NLRB 1127, 1127 fn. 1 (2005) (the Board does not require the presence of each factor in finding alter ego status), *enfd.* sub nom. *Trafford Distribution Center v. NLRB*, 478 F.3d 172, 182 (3d Cir. 2007). We also do not rely on *Park Avenue Investments LLC*, 359 NLRB No. 134 (2013), cited by the judge. See *NLRB v. Noel Canning*, *supra*.

² We have amended the judge's Conclusions of Law and Remedy to conform to his unfair labor practice findings and to reflect that the Respondent recognized the Union as the employees' bargaining representative under Sec. 8(f) without regard to the Union's majority status. We shall modify the judge's recommended Order to conform to the amended conclusions of law and remedy, and to the Board's standard remedial language. We shall also substitute a new notice to conform to the Order as modified and in accordance with our decisions in *Ishikawa Gasket America, Inc.*, 337 NLRB 175 (2001), *affd.* 354 F.3d 534 (6th Cir. 2004), and *Durham School Services*, 360 NLRB No. 85 (2014).

AMENDED REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

In addition to the remedies recommended by the judge, we shall require the Respondent to compensate unit employees for the adverse tax consequences, if any, of receiving any lump-sum backpay awards, and file a report with the Social Security Administration allocating the backpay awards to the appropriate calendar quarters for each employee. *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB No. 10 (2014).

Further, having found that the Respondent unlawfully discontinued required contributions to certain benefit funds, we shall order the Respondent to make whole its unit employees covered by those funds by making all delinquent contributions to those funds, including any additional amounts due the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979).³ The Respondent also shall be required to reimburse its unit employees for any expenses ensuing from its failure to make the required benefit fund contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), including all medical expenses that would have been covered by the funds. Such amounts shall be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010).⁴

ORDER

The National Labor Relations Board orders that the Respondents, Newark Electric Corporation, Newark Electric 2.0, Inc., and Colacino Industries, Inc., Newark, New York, a single employer and alter egos, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to honor the February 24, 2011 Letter of Assent C and the collective-bargaining agreement that is

in effect from June 1, 2012, through May 31, 2015, between the IBEW, Local 840 and the Finger Lakes Chapter, NECA, which establishes the terms and conditions of employment of the Respondents' employees in the following appropriate bargaining unit during the term of the contract and any automatic extensions thereof:

All employees performing work, as set forth in Article II of the January 1, 2011 to May 31, 2012 agreement between the Union and the Finger Lakes, New York Chapter of NECA, and the June 1, 2012 to May 31, 2015 successor agreement between the Union and the Finger Lakes, New York Chapter of NECA, within the geographic area set forth in Article II of the same agreements.

(b) Failing and refusing to recognize and bargain with the Union as the exclusive collective-bargaining representative, within the meaning of Section 8(f), of the Respondents' employees in the appropriate unit during the term of their collective-bargaining agreement and any automatic extensions thereof.

(c) Repudiating and failing and refusing to apply to unit employees their collective-bargaining agreement since July 20, 2012, and to make payments to the fringe benefit funds under the collective-bargaining agreement and any automatic extensions thereof.

(d) Discharging or otherwise discriminating against employees because they form, join, or assist the IBEW, Local 840, or any other labor organization, or engage in protected concerted activities, to discourage employees from engaging in these activities.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Give full force and effect to the terms and conditions of employment provided in the collective-bargaining agreement with the Union, and any automatic renewal or extension of it.

(b) Make whole unit employees for any loss of earnings and other benefits resulting from the Respondents' failure to honor the terms of the agreement, in the manner set forth in the remedy section of the judge's decision as amended in this decision.

(c) Remit the fringe benefit funds payments that have become due and reimburse unit employees for any losses or expenses arising from the Respondents' failure to make the required payments, in the manner set forth in the amended remedy section of this decision.

(d) On request, bargain collectively in good faith with the Union as the exclusive representative of the employ-

³ We leave to the compliance stage the question whether the Respondent must pay any additional amounts into the benefit funds in order to satisfy our "make whole" remedy. *Merryweather Optical Co.*, supra.

⁴ To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the employer's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

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ees in the appropriate bargaining unit during the term of the collective-bargaining agreement and any automatic extensions thereof.

(e) Within 14 days from the date of this Order, offer Anthony Blondell full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(f) Make Anthony Blondell whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the remedy section of the judge's decision as amended in this decision.

(g) Compensate each affected employee, including Anthony Blondell, for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarters for each employee.

(h) Within 14 days from the date of this Order, remove from their files any reference to the unlawful discharge of Anthony Blondell, and within 3 days thereafter, notify him in writing that this has been done and that the discharge will not be used against him in any way.

(i) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay and other adjustments of monetary benefits due under the terms of this Order.

(j) Within 14 days after service by the Region, post at the Respondents' Newark, New York facilities copies of the attached notice marked "Appendix."⁵ Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by the Respondents' authorized representative, shall be posted by the Respondents and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondents customarily communicate with their employees by

such means. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondents have gone out of business or closed the facilities involved in these proceedings, or sold the business or the facilities involved herein, the Respondents shall duplicate and mail, at their own expense, a copy of the notice to all current employees and former employees employed by the Respondents at any time since July 20, 2012.

(k) Within 21 days after service by the Region, file with the Regional Director for Region 3 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondents have taken to comply.

Dated, Washington, D.C. March 26, 2015

Philip A. Miscimarra, Member

Kent Y. Hirozawa, Member

Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to honor the February 24, 2011 Letter of Assent C and the collective-bargaining agreement with the Union that is in effect from June 1, 2012, through May 31, 2015, which establishes the terms and conditions of your employment in the following appro-

⁵ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

priate bargaining unit during the term of the contract and any automatic extensions thereof:

All employees performing work, as set forth in Article II of the January 1, 2011 to May 31, 2012 agreement between the Union and the Finger Lakes, New York Chapter of NECA, and the June 1, 2012 to May 31, 2015 successor agreement between the Union and the Finger Lakes, New York Chapter of NECA, within the geographic area set forth in Article II of the same agreements.

WE WILL NOT fail and refuse to recognize and bargain in good faith with the Union as your collective-bargaining representative during the term of the collective-bargaining agreement and any automatic extensions thereof.

WE WILL NOT repudiate and fail and refuse to apply to unit employees your collective-bargaining agreement since July 20, 2012, and to make payments to the fringe benefit funds under that agreement and any automatic extensions thereof.

WE WILL NOT discharge or otherwise discriminate against any of you for supporting the IBEW, Local 840, or any other labor organization, or engaging in protected concerted activities, to discourage you from engaging in these activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL give full force and effect to the collective-bargaining agreement effective from June 1, 2012, through May 31, 2015, and any automatic extensions thereof.

WE WILL make you whole for any losses you may have suffered as a result of our refusal to honor the terms of the collective-bargaining agreement.

WE WILL remit the fringe benefit funds payments that have become due and reimburse you for any losses or expenses arising from our failure to make the required payments.

WE WILL, on request, bargain in good faith with the Union as your exclusive collective-bargaining representative during the term of the collective-bargaining agreement.

WE WILL, within 14 days from the date of the Board's Order, offer Anthony Blondell full reinstatement to his former job or, if that job is no longer available, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Anthony Blondell whole for any loss of earnings and other benefits resulting from his discharge, less any net interim earnings, plus interest.

WE WILL compensate each affected employee, including Anthony Blondell, for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarters for each employee.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharge of Anthony Blondell, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the discharge will not be used against him in any way.

NEWARK ELECTRIC CORP., NEWARK ELECTRIC 2.0, INC., AND COLACINO INDUSTRIES, INC.

The Board's decision can be found at www.nlrb.gov/case/03-CA-088127 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.



Claire T. Sellers, Esq. and Mary Elizabeth Mattimore, Esq., for the General Counsel.

Edward A. Trevvett, Esq. (Harris Beach, PLLC), of Pittsford, New York, for the Respondent-Employer.

DECISION

STATEMENT OF THE CASE

KENNETH W. CHU, Administrative Law Judge. This case was tried on August 26 and 27, 2013,¹ in Buffalo, New York, pursuant to a complaint and notice of hearing issued by the Regional Director for Region 3 of the National Labor Relations Board (NLRB or Board) on May 30, 2013. (GC Exh. 1.)² The complaint, based upon charges filed by the International Brotherhood of Electrical Workers (IBEW), Local 840 (the Charging

¹ All dates are in 2012, unless otherwise indicated.

² Testimony is noted as "Tr." (Transcript). The exhibits for the General Counsel and Respondent are identified as "GC Exh." and "R. Exh." The closing briefs are identified as "GC Br." for the General Counsel and "R. Br." for the Respondent.

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Party or Union), alleges that Newark Electric Corp. (Respondent Newark Electric), Newark Electric 2.0, Inc. (Respondent Newark 2.0), and Colacino Industries, Inc. (Respondent Colacino) (collectively, the Respondents) are a single employer or alter egos and the Respondents violated Section 8(a)(5), (3), and (1) of the National Labor Relations Act (NLRA or Act).

The Respondents filed timely amended answers to the complaint denying the material allegations in the complaint and asserting several affirmative defenses.³

Issues

The complaint alleges that the Respondents violated Section 8(a)(5) and (1) of the Act when on or about July 20, 2012, they withdrew recognition and repudiated the collective-bargaining agreement that they were parties with the Union. The complaint further alleges that the Respondents violated Section 8(a)(3) and (1) when employee Anthony Blondell (Blondell) was laid-off because his employment was conditioned upon working for a nonunion company.

After the close of the hearing, the briefs were timely filed by the parties, which I have carefully considered. On the entire record, including my observation of the demeanor of the wit-

nesses,⁴ I make the following

FINDINGS OF FACT

I. JURISDICTION AND LABOR ORGANIZATION STATUS

At all material times, the Respondent Newark Electric, a New York corporation, has been an electrical contractor in the construction industry with an office and place of business in Newark, New York. At all material times, the Respondent Newark 2.0, a New York corporation, has been an electrical contractor in the construction industry with an office and place of business in Newark, New York. At all material times, the Respondent Colacino Industries, a New York corporation, has been an electrical contractor in the construction industry and a provider of information technology services with an office and place of business in Newark, New York. During a representative 1-year period, Respondents Colacino Industries and Newark 2.0 purchased and received goods at its Newark, New York facility valued in excess of \$50,000 directly from enterprises within the State of New York, each of which other enterprises had received the goods directly from points outside the State of New York.⁵

The Union is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICE

A. Background

James Colacino (Colacino) is the owner and president of Respondents Colacino Industries and Newark 2.0. The Respondent Newark Electric was incorporated in May 1979 by Colacino's father, Richard Colacino. (R. Exh. 5.) Colacino was employed by his father and worked at Respondent Newark Electric for over 20 years. Colacino testified he purchased the assets, good will, equipment, website, customer database from his father in 2000, but did not outright buy the company or assumed the company's liabilities.

Colacino maintained that Newark Electric was always 100 percent owned by his father, Richard Colacino. (Tr. 170–173; 243–245.) Colacino denies being an owner or company officer of Respondent Newark Electric. (Tr. 171.) According to Richard Colacino, Newark Electric has not been operating as a business since its assets were sold in 2000, and was subsequently dissolved on April 13, 2013, after resolving its tax liabilities. (Tr. 174–175; 285–288.)

Respondent Colacino Industries was incorporated by Colacino in February 2000, and the purchased assets from Newark Electric were folded into Colacino Industries. (Tr.

³ Counsel for the Respondents moved to dismiss the complaint and asserted at trial (Tr. 11, 12) and in its brief that the Board and those who represent it, had no authority to issue this complaint and prosecute this action because the Board did not have a quorum of three of its five members in order to issue a complaint and to take other actions, citing *Noel Canning v. NLRB*, 705 F.3d 490, 499 (D.C. Cir. 2013), cert. granted 133 S.Ct. 2861 (2013), and *New Process Steel, L.P. v. NLRB*, 130 S.Ct. 2635, 2645. However, as the court acknowledged, its decision conflicts with rulings of at least three other courts of appeals. See *Evans v. Stephens*, 387 F.3d 1220 (11th Cir. 2004), cert. denied 544 U.S. 942 (2005); *U.S. v. Woodley*, 751 F.2d 1008 (9th Cir. 1985); *U.S. v. Alocco*, 305 F.2d 704 (2d Cir. 1962). Thus, the Board has rejected this argument, as the issue regarding the validity of recess appointments “remains in litigation, and pending a definitive resolution, the Board is charged to fulfill its responsibilities under the Act.” See *G4S Regulated Security Solutions*, 359 NLRB No. 101, slip op. at 1 fn. 1 (2013), citing *Belgrove Post Acute Care Center*, 359 NLRB No. 77, slip op. at 1 fn. 1 (2013). The Respondent's alternate argument is that the complaint should be dismissed because Acting General Counsel Lafe Solomon could not properly be appointed under the Federal Vacancies Reform Act (FVRA) and therefore lacked authority to issue the complaint in this case, citing *Hooks v. Kitsap Tenant Support Services, Inc.*, 2013 U.S. Dist. LEXIS 114320 (W.D. Wash. Aug. 12, 2013). (R. Exh. 1.) The General Counsel argues that AGC Solomon was properly appointed under the FVRA. Contrary to the Respondent's assertion, the express terms of the FVRA make it applicable to all executive agencies, with one specific exception inapplicable here, 5 U.S.C. § 3345(a); see 5 U.S.C. § 105 (“Executive agency” defined to include independent agencies), and to all offices within those agencies, such as the office of General Counsel, that are filled by presidential appointment with Senate confirmation, 5 U.S.C. § 3345(a). *Belgrove Post Acute Care Center*, above. I am bound only to apply established Board precedent which the Supreme Court has not reversed, notwithstanding contrary decisions by the lower courts. *Waco, Inc.*, 273 NLRB 746, 749 fn. 14 (1984). As such, the Respondents' motion to dismiss the complaint is denied. Moreover, the Board now has five members and a General Counsel who have been confirmed by the Senate.

⁴ The credibility resolutions herein have been derived from a review of the entire testimonial record and exhibits, with due regard for the logic of probability, the demeanor of the witnesses, and the teachings of *NLRB v. Walton Mfg. Co.*, 369 U.S. 404, 408 (1962). As to those witnesses testifying in contradiction to the findings herein, their testimony has been discredited, either as having been in conflict with credited documentary or testimonial evidence or because it was not credible and unworthy of belief.

⁵ The attorney for the Respondents and the General Counsel stipulated that Respondents Colacino Industries and Newark 2.0 are single employer/alter egos for the purpose of the hearing and that the Board has jurisdiction over them. (Tr. 7, 8.)

200.) Respondent Colacino Industries is 100 percent owned by Colacino who is also the president. (Tr. 183; R. Exh. 3.) The place of business for Respondent Newark Electric was at 131 Harrison Street, Newark, New York, at the time Colacino Industries was incorporated. Colacino testified that once Colacino Industries was incorporated, he moved all the purchased assets from Newark Electric to a different building at 126 Harrison Street, which was across the street. The building that had housed Newark Electric on 131 Harrison Street was owned by Colacino (which he had purchased during his parents' divorce proceeding) and he sold the property. (Tr. 244, 245.) The building on 126 Harrison Street is also owned by Colacino and Respondent Colacino Industries leases and pay rent to Colacino for the use of the property. (Tr. 173, 195.)

Colacino stated that the primary business of Respondent Colacino Industries was in automation systems integration, performing mainly software development, integration and service for water, sewer systems, food industry, and manufacturing. Colacino indicated that a small portion of Colacino Industries' business was in traditional electrical work, which was mostly handled by Richard Colacino. (Tr. 166–170; 240.)

Colacino maintain that Newark Electric was dormant after the assets were sold by his father in 2000. Colacino testified that Newark Electric had done no business and had not hired any employees since 2000. (Tr. 244, 245.) Colacino stated, however, for name recognition purposes during the transition of operations from Newark Electric to Colacino Industries, he continued to use the Newark Electric logo, stationery, and other identifying aspects. He testified that "we wanted to retain the name recognition (of Newark Electric). So, over a period of time, as we transitioned . . . we're trying to keep the brand recognition." (Tr. 173, 198–200, 241.)

Contrary to the assertions of Colacino, I find that the Respondent Newark Electric was holding itself out to the public as an active operating company from the years 2000 to 2012, even after selling all its assets to Respondent Colacino Industries. The record shows that Respondents Colacino Industries and Newark Electric are housed at 126 Harrison Street. The entrance doors to 126 Harrison Street are stenciled with the Newark Electric and Colacino Industries logos (Tr. 173); the Colacino Industries stationery also contained the Newark Electric logo; the company vans for Colacino Industries company continued to advertise and display the Newark Electric logo (although Colacino was allegedly working on the "next generation" logo (Tr. 174, 246; GC Exh. 19); and the customer purchase orders and invoices were addressed to Respondents Colacino Industries and Newark Electric. (GC Exhs. 34, 32, 31.)

Further, the employees of Colacino Industries completed timesheets that showed the Colacino and Newark Electric logos. Employees filling out their job cards and supply requisitions only showed the Newark Electric logo. The employer's contributions to the union funds came from Newark Electric. (GC Exh. 9.)

Blondell testified that he completed his job cards with the Newark Electric logo. (Tr. 126.) Blondell further testified that Colacino was the owner of Respondents Colacino Industries, Newark Electric, and Newark Electric 2.0. He confirmed all

three companies are housed in one building with one address and that the names of Respondent Colacino Industries and Newark Electric are stenciled on the glass door. He said that he received all his supplies and parts from one warehouse regardless of which company was performing the work. Blondell said there was one facsimile, copier, and printer machine for all three companies and one phone system that did not identify the company for the incoming call. Colacino had kept the original Newark Electric phone number. Blondell also confirmed that the company vans continue to display the Newark Electric logo. Blondell said that none of the vans had any markings indicating Colacino Industries or Newark Electric 2.0. (Tr. 119–124.)

Colacino testified that the phone calls would all come in for Colacino Industries, but for the electric and pipe work, the calls would be directed to Richard Colacino (who mainly performed this type of work) and the calls for any automation systems work would be taken by a different group. (Tr. 176.) He said that communications by emails between the Respondents and the public were interchangeable between newarkelectric.com and colacino.com (GC Exh. 29), but explained that it did not matter which email address was used by an outsider because the messages would always arrive under the colacino.com mailbox. (Tr. 196–198, 259.)

With regard to Respondent Newark Electric 2.0, Colacino filed for incorporation on March 8, 2011, and at the same time, applied for a Federal employer identification number. (GC Exh. 28.) The Respondent Newark Electric 2.0 is 100 percent owned by Colacino who is also the president. According to Colacino, Newark Electric 2.0 was incorporated to perform the traditional electrical work that was not Colacino Industries' main business. He envisioned Respondent Newark Electric 2.0 to be a division of Respondent Colacino Industries. (Tr. 170–174.) As such, the counsel for the General Counsel and for the Respondents stipulated that Respondents Newark Electric 2.0 and Colacino Industries are a single employer/alter ego enterprise and subjected to the Board's jurisdiction. (Tr. 7, 8.)

Colacino testified that Newark Electric 2.0 was also allegedly created in order to appease the aggressive barrage of emails, letters, and personal appearances by the business manager of the Union, Michael Davis (Davis). Colacino complained that Davis was disrupting his office staff in his campaign to convince Colacino to sign up with the Union. (Tr. 180.)

Davis has been the business manager for the Local 840 since July 2011, and is responsible for enforcing the collective-bargaining agreements between the Union and employers. Prior to holding that position, Davis was a union organizer from 2005 to 2011. Davis said that his objective as a union organizer was to increase union membership and to convert employers from nonunion to union contractors. (Tr. 15, 16.)

Colacino testified that Davis had been trying to persuade him to sign up with the Union since 2005, and he would have frequent contacts with Colacino at least several times a week, including lunches, personal appearances, and scheduled meetings at his premises. Colacino characterized these contacts as "persistent" with a fair amount of pressure. Colacino stated that Davis wanted him to sign a letter of assent, which is essentially an agreement for a trial period for the Union to demonstrate the benefits of being a union contractor.

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Colacino testified that Davis also offered to provide journeyman caliber electricians for him on a trial basis. Colacino repined that Davis would provide such employees, including Blondell, and then take them off the job even if they were willing to continue working for a nonunion shop. According to Colacino, the campaign to unionize by Davis reached a point where Davis would sign up some of Colacino's employees as union member and then immediately laid them off because they could not continue to work for a nonunion shop. Colacino said he felt to pressure to sign a letter of assent when Davis allegedly represented to him that Colacino would be able to have Blondell and other union electricians return to work upon signing the letter. (Tr. 246–251.) According to Colacino, Davis would leave completed letters of assent for Colacino to sign and made comments that Colacino's problem with finding good skilled labor would "go away" once he signs the letter of assent. (Tr. 254; R. Exh. 2.)

Davis testified that he knew James and Richard Colacino since 2005, and does not deny trying to sign up Respondent Newark Electric as a union contractor. (Tr. 21, 22, 64.) Davis testified that he was aware that the elder Colacino sold Newark Electric to James Colacino. Davis also believed that Colacino then became president of Newark Electric because Colacino gave him a company business card containing the Newark Electric logo. The record shows that the business card stated the name of James Colacino and his title has "President/CEO." (Tr. 64–67; GC Exh. 7.) Davis testified that was not aware of the existence of Newark Electric 2.0 during the time when he was trying to sign up Newark Electric as a union shop. (Tr. 58, 65, 299.)

Vicky Bliss (Bliss) testified that she worked at Respondent Colacino Industries in 2010 and 2011 as the office manager. She witnessed Davis coming by the office looking for Colacino at least 3 times a day. Bliss said that Davis would show up at the office unannounced or wait for Colacino in the company parking lot. On other occasions, Bliss said that Davis would call for Colacino. Bliss said that she knew Davis was trying to get Colacino to join the union. She characterized Davis' conversations and efforts as "friendly but persuasive." (Tr. 290–293.)

B. The Letters of Assent

Davis testified that Local 840 represents electricians in five counties in the northern tier of the State of New York. The Local, as part of IBEW, has a master collective-bargaining agreement with the National Electrical Contractors Association (NECA), a multiple employers association.

Davis said that, in essence, under the work preservation clause in section 2.06(a) of the master agreement, a union contractor is prohibited from subcontracting out to a nonunion shop. Davis testified that the previous master agreement was from January 1, 2011 to May 31, and the current agreement is from June 1 to May 31, 2015. (Tr. 17–18; GC Exhs. 2, 3.) The work preservation clause states:

In order to protect and preserve, for the employees covered by this Agreement, all work heretofore performed by them, and in order to prevent any device or subterfuge to avoid the pro-

tection and preservation of such work, it is hereby agreed as follows: If and when the Employer shall perform any on-site construction work of the type covered by this Agreement, under its own name or under the name of another, as a corporation, company, partnership, or any other business entity including a joint venture, wherein the Employer, through its officers, directors, partners, or stockholders, exercises either directly or indirectly, management control or majority ownership, the terms and conditions of this Agreement shall be applicable to all such work. All charges or violations of this Section shall be considered as a dispute and shall be processed in accordance with the provisions of this Agreement covering the procedure for the handling of grievances and the final binding resolution of disputes.

Davis testified that an employer becomes a party to the master agreement by signing either a Letter of Assent A or a Letter of Assent C. He indicated that a Letter of Assent A is for an employer who has been a previous union contractor whereas a Letter of Assent C is for an employer who has not been a union contractor but is willing to engage as a union shop on a trial basis. (Tr. 18, 19.) Upon signing a Letter of Assent C, the employer becomes bound by the multiemployer master agreement between the Union and NECA.

A Letter of Assent C bounds the employer to the master agreement for 180 days from the effective date of the letter.⁶ The employer, after the first 180 days and within the first 12 months of the effective date, may terminate the letter of assent and the master collective-bargaining agreement by giving written notice at least 30 days prior to the selected termination date to the NECA and Union. At the earliest point in time to terminate, the employer would be required to give written notice on the 181st day from the effective date.

If the employer does not take advantage to terminate the letter between the 181st and 335th day, then the employer would be bound by the terms of the master agreement until it expires. The 335th day of the 1-year anniversary date of the letter is the last day possible to terminate the letter because the employer is required to provide a written 30-day notice to the NECA and Union before the anniversary date. If the employer fails to terminate the letter of assent after the first 12 months from the effective date, the employer is bound by the master agreement until its stated termination date as well as to all subsequent amendments and renewals.

If the employer desires to terminate the letter of assent and does not intend to comply with and be bound by all the provisions in any subsequent agreements, the employer must notify the NECA and Union in writing at least 100 days prior to the termination date of the then current agreement. (GC Exh. 5; Tr. 20, 21.)

C. The Signing of Letters of Assent C by Respondent Newark Electric

Davis has been trying to convince Colacino to sign a Letter of Assent C for Respondent Newark Electric since 2006. (Tr. 19–21.) Davis said he finally convinced Colacino to sign the

⁶ The Letter of Assent A played no significant role in this complaint. (GC Exh. 4.)

Letter of Assent C in February 2011. Davis testified that it was his understanding that the Letter of Assent C signed by Colacino was for the Respondent Newark Electric. Davis said the letter of assent was signed in the evening on February 24, 2011 at the Newark Electric offices and approved by the NECA on May 6, 2011. (GC Exh. 6.) Davis said that Colacino signed on behalf of Newark Electric and that Richard Colacino was also presented for the signing. Davis indicated that Clark Culver, who was the former business manager, signed for the Union. Davis said that everyone then went to dinner to celebrate the signing. (Tr. 21–29.) Colacino testified that his father was there for the signing because “he likes to eat” and everyone went to dinner afterwards. (Tr. 232.)

The record shows that the Letter of Assent C was signed on February 24, 2011, by Colacino above the line that had his name and title as CEO. The name of the firm on the Letter of Assent C stated “Newark Electric” with an address at 126 Harrison Street. The Federal employer identification number was referenced as 16–1127802, which was the correct Federal ID number for Newark Electric. Davis testified that the name of the company and Federal ID number was obtained from Bliss. (Tr. 22.)

Colacino testified that he did not know how Davis received the Federal ID information and denied authorizing any one in his company to provide the information to him. He indicated that previous letter of assents were filled out by Davis or someone working for the Union with incorrect information, such as the address for Newark Electric. Colacino maintained that he did not review the Letter of Assent C before signing on February 24. Colacino testified that “I assumed (the information) would be accurate because Mike (Davis) was well aware of the formation of separate companies.” (Tr. 254–257.) Colacino insisted that he told Davis that the Letter of Assent C was for Respondent Newark Electric 2.0 and never noticed that the symbol “2.0” was missing from the letter. (Tr. 183, 232, 265.) Colacino also testified that Newark Electric 2.0 did not have a Federal employer tax ID at the time the Letter of Assent C was signed. (Tr. 257.) Davis, however, has always maintained that he was not aware of the existence of Respondent Newark Electric 2.0 until April 2012.

The effective date of the Letter of Assent C was February 24, 2011. Pursuant to the contract provisions of the letter, the Respondent Newark Electric was bound to the terms of the letter for the next 180 days and would then have the opportunity from August 24, 2011, to January 24, 2012, to terminate the assent by providing the 30-day written notice to both the Union and NECA. At the very latest date that the Respondent Newark Electric could terminate the Letter of Assent C and the collective-bargaining agreement was on January 24, 2012, which would be 30 days prior to the 1-year anniversary of the letter of assent.⁷

With the signing of the letter of assent, the Union became the exclusive collective-bargaining representative of the Respondents’ employees in the following appropriate bargaining unit of

All employees performing work, as set forth in Article II of the January 1, 2011 to May 31, 2012 agreement between the Union and the Finger Lakes, New York Chapter of NECA, and the June 1, 2012 to May 31, 2015 successor agreement between the Union and the Finger Lakes, New York Chapter of NECA, with the geographic area set forth in Article II of the same agreements.

At the time the Letter of Assent C was signed by the Respondent Newark Electric, there were several union members employed by Respondent Newark Electric. Davis testified that he agreed with Colacino that the union members would finish up their assignments under the nonunion terms and conditions of employment and thereafter, they would begin to receive union wages and benefits in accordance with the letter of assent and the master collective-bargaining agreement. Davis recalled that Blondell, Mike Bebernitz (Bebernitz), and Mark Patterson (Patterson) were three employees already performing bargaining unit work at Respondent Newark Electric. Davis said that eventually these three and others would become union members after performing their obligatory 1000 hours probationary period. (Tr. 25–28.)

The record shows that the payroll reports of the employees and the union local contributions and deductions reflect all three named Respondents. (GC Exh. 9.) Davis testified that he did not pay much attention to the different names or Federal tax ID numbers on the reports or to the contributions being paid to the Local. He said his only concern was that the benefits were being properly and timely made. (Tr. 59, 70–80.)

As noted above, Respondent Colacino Industries was created in 2000 after Colacino brought the Newark Electric assets from his father. Colacino testified that he did not sign a letter of assent for Colacino Industries when he signed one for Newark Electric in February 2011, because he was trying to operate the companies as two separate businesses. Colacino reiterated that he wanted to segregate the electrical work with Newark Electric 2.0. (Tr. 183.) Nevertheless, Colacino signed Respondent Colacino Industries to a Letter of Assent C just 2 months after signing Newark Electric. (Tr. 185.)

Colacino explained that for accounting and administrative reasons, he was not able to segregate the finances and insurance for the two companies. Colacino said, for example, that he did not have the cash reserves to pay salaries for the Newark Electric 2.0 employees and that the premiums were extremely high to insure a new company. Colacino said that he raised the difficulties in operating two companies under one financial and administrative roof with Davis and he purportedly told Colacino that his problems would be resolved if Colacino also sign up Respondent Colacino Industries to a Letter of Assent C. (Tr. 183–185.)

Colacino testified that it was his intent that the Letter of Assent C binding Respondent Colacino Industries would supersede the letter of assent signed earlier with Respondent Newark Electric 2.0. Colacino said that Davis told him that the letter of assent for Newark Electric would essentially just dissolve. Colacino testified that Davis told him a single company could not have two concurrent letters, but that he (Davis) would nevertheless check with IBEW. Colacino said that Davis informed

⁷ The counsel for the General Counsel inadvertently noted February 24, 2011, as the expiration date of the letter of assent, which actually should read February 24, 2012. (See GC Br. at 11.)

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him about 30 days later that the easiest way to resolve this issue was to redate the letter of assent with Respondent Newark Electric so that it would follow the same timeframe as the letter of assent for Colacino Industries. He testified that Davis unexpectedly called him and said that the Union had redated the Letter of Assent C for Respondent Newark Electric to match the July 20 date. (Tr. 184–192.) Colacino testified that he never received the redated letter of assent, but it was his understanding that it was accomplished. He never gave another thought about the redating of the Letter of Assent C. (Tr. 223, 224.)

According to Davis, it was Colacino who approached him in July 2011, and suggested to Davis about signing up Respondent Colacino Industries to a Letter of Assent C. Davis testified that Colacino explained to him that it was difficult to maintain the accounting books with two different companies and two different set of employees. Davis testified that it was his understanding that Colacino was referring to Respondents Colacino Industries and Newark Electric as the two companies with accounting issues. Davis insisted that Colacino never mentioned Respondent Newark Electric 2.0 as being the second company as having the bookkeeping problems. According to Davis, since he was not yet aware that Newark Electric 2.0 existed, he told Colacino that there should be no problems with two letters of assent, but would have to first check with IBEW. Davis testified that the Letter of Assent C for Respondent Colacino Industries was approved and Colacino signed the letter on July 20, 2011.⁸ (Tr. 29–32, 92; GC Exh. 10.)

Contrary to Colacino's testimony, Davis testified that the letter of assent for Respondent Newark Electric was still in effect since he had already been informed by the IBEW that there were no problems with a single owner having two different letters for two different companies. Davis absolutely denied that he told Colacino the letter of assent for Respondent Colacino Industries would supersede the letter of assent for Respondent Newark Electric. He further denied agreeing to redate the letter of assent for Respondent Newark Electric to the same date (July 20) as the letter of assent signed with Respondent Colacino Industries. (Tr. 32–35, 88–91, 93–96.)

D. The Termination of the Letters of Assent

Davis testified that Colacino notified him by letter dated April 12 that Respondent Colacino Industries was terminating its Letter of Assent C and the collective-bargaining agreement with the Union effective on May 26. A copy of the notice to terminate was also sent to the NECA, Finger Lakes chapter. Colacino also requested a meeting with Davis to discuss the "the reasons for this decision and how the IBEW can support NEC 2.0, Inc." (GC Exhs. 12, 33.) Davis said he was taken by surprise because this was the first occasion he heard of a company named Newark Electric 2.0. Davis attempted to contact Colacino for a meeting, but was never able to reach him. (Tr. 36, 37, 58.)

The parties stipulated and it is not in dispute that Colacino

correctly and timely terminated the Letter of Assent C on May 26 with Respondent Colacino Industries. (Tr. 83.)

The record shows that Respondent Colacino Industries continued to pay union contributions for April, May, and June. (GC Exhs. 14, 15.) However, it was obvious that Colacino was moving away from his relationship with the Union. On June 29, Davis met with a union member, Rick Bush (Bush), who requested information on how to withdraw from the Union. According to Davis, Bush wanted an honorary withdrawal because it was his intention to work for a nonunion shop. Davis told Bush that Newark Electric was still a union shop and that if he relinquishes his union membership, Bush would no longer be able to work for a union shop. Davis testified that Bush then decided to resign from the union. Davis surmised that Bush wanted to work for the Respondents.

After his conversation with Bush, Davis said that he again attempted to contact Colacino to determine what was happening. (Tr. 38–49.) Davis further testified that he was unable to reach Colacino, but shortly that same day, he received a visit from two Colacino employees and was handed a letter dated June 29. (Tr. 40–42; GC Exh. 13.) The letter stated, in part, that

In compliance with the letter of assent dated 7/20/2011, Newark Electric 2.0 is terminating the letter of assent and the collective-bargaining agreement effective today, the 29th of June, 2012.

Davis said he knew nothing about Newark Electric 2.0 and insisted that the Union never signed a letter of assent with Newark Electric 2.0. (Tr. 41, 42.) Davis testified that eventually, Scott Barra (Barra) contacted him and arranged for a meeting with Colacino for July 2. Davis said that Barra was a union member referred to Colacino to perform collective-bargaining work.⁹

At the July 2 meeting, Colacino began by saying that he was being restricted in his flexibility to hire employees that could perform programming work (ostensibly for Respondent Colacino Industries) that required some electrical work because the electrical work was reserved for bargaining unit employees. Davis replied that he did not have a problem if Colacino hired one employee to perform both union and nonunion work so long as Colacino paid to the union funds when the programmers did electrical work. It was at this meeting that Colacino then asserted that the signing of Respondent Colacino Industries to the Letter of Assent C superseded the letter of assent for Respondent Newark Electric. Davis replied that the Letter of Assent C was signed with Respondent Newark Electric and still considered that company as a union contractor. Davis thought that the meeting was fruitful and agreed to meet again with Colacino on July 9. However, Davis received a phone call from Bliss informing him that Colacino intended to go nonunion and the parties never met. (Tr. 44–47.)

Colacino testified that he was aware that there were two letters of assent, but thought it was no longer an issue because he had liquidated Newark Electric 2.0 on July 31 (the actual paperwork was filed on September 4). (Tr. 214–218, 241; R.

⁸ Colacino testified that he signed the Letter of Assent C for Respondent Colacino Industries "2 months later" (after the February 24, 2011 Letter of Assent C for Respondent Newark Electric), which was obviously mistaken testimony. (Tr. 183.)

⁹ Barra, like Bush, also resigned from the Union in order to work for Colacino. (Tr. 48, 49; GC Exh. 16.)

Exh. 4.) Colacino further testified that when Blondell, Barra, and Bush brought to his attention in June that the Union still believed Respondent Newark Electric 2.0 was still a union shop, Colacino decided it was wise to affirmatively terminate the letter of assent for Newark Electric 2.0 on June 29. Colacino said that he wrote to Davis to inform him of the termination. The notice terminating the letter of assent for Newark Electric 2.0 referenced the July 20, 2011 signing date for the Letter of Assent C because Colacino believed that the original date of February 24, 2011, for Newark Electric 2.0 had been redated by Davis to July 20. (GC Exh. 13; Tr. 218–220.) Colacino conceded that if the letter of assent for Respondent Newark Electric 2.0 was not redated, the notice to terminate would have been untimely.

Davis testified that the notice to terminate Newark Electric must also be filed with the NECA, which he contended, was not done by Colacino. (Tr. 102.) Colacino insisted that he sent a copy of the June 29 termination notice to the NECA, but the notice to the NECA was not provided for the record by the Respondents. (Tr. 220.)

Colacino also said that the employee who had wrote the letter to terminate the letter of assent for the Newark Electric 2.0 mistakenly typed in June 29 as the effective termination date, when it should have been July 29. Colacino again insisted that the Letter of Assent C was signed for Respondent Newark Electric 2.0 and not for any other company. (Tr. 221–224.)

Discussion

A. Single Employer and Alter Egos Status

The General Counsel argues that Respondents Colacino Industries and Newark Electric are either a single employer entity or alter egos. The General Counsel contends that if Colacino Industries and Newark Electric are single employer/alter egos, then Respondent Colacino Industries is bound to the Letter of Assent C between the Respondent Newark Electric and the Union.

The single employer doctrine is found when two ongoing businesses are treated as a single employer based upon the ground that they are owned and operated as a single unit. *Pennitech Papers, Inc. v. NLRB*, 706 F.2d 18 (1st Cir. 1983), cert. denied 464 U.S. 892, 104 S.Ct. 237 (1983). Motive is normally irrelevant. In finding single employer status, the Board has typically looked to whether there is (1) common ownership; (2) common management; (3) functional interrelation of operations; and (4) centralized control of labor relations. *Broadcast Employees NABET Local 1264 v. Broadcast Service of Mobile*, 380 U.S. 255, 85 S.Ct. 876 (1965). In *Flat Dog Productions, Inc.*, 347 NLRB 1180, 1181–1182 (2006), the Board explained

In determining whether two entities constitute a single employer, the Board considers four factors: common control over labor relations, common management, common ownership, and interrelation of operations. *Emsing's Supermarket, Inc.*, 284 NLRB 302 (1987), enf'd. 872 F.2d 1279 (7th Cir. 1989).

In *Radio & Television Broadcast Technicians v. Broadcast*

Service of Mobile, 380 U.S. 255, 256 (1965), the Supreme Court, in considering which factors determine whether nominally separate business entities should be treated as a single employer, stated

The controlling criteria set out and elaborated in Board decisions, are interrelation of operations, common management, centralized control of labor relations and common ownership.

Not all of the criteria need be present to establish a single employer status and no single criterion is controlling. Single employer status “ultimately depends upon ‘all circumstances of the case’ and is characterized by the absence of an ‘arms-length relationship found among unintegrated companies.’” *Mercy Hospital of Buffalo*, 336 NLRB 1282, 1284 (2001); also *Hahn Motors*, 283 NLRB 901 (1987).

With respect to the General Counsel’s theory that the Respondents are alter egos, the Board utilizes additional factors and a broader standard in determining whether two or more ostensibly distinct entities are in fact alter egos. The Board considers whether the entities in question are substantially identical, including the factors of management, business purpose, operating equipment, customers, supervision as well as common ownership. *Crawford Door Sales Co.*, 226 NLRB 1144 (1976); *Advance Electric*, 268 NLRB 1001, 1002 (1984).

The Board and the courts have applied the alter ego doctrine in those situations where one employer entity will be regarded as a continuation of a predecessor, and the two will be treated interchangeably for purposes of applying labor laws. The most obvious example occurs when the second entity is created by the owners of the first for the purpose of evading labor law responsibilities; but identity of ownership, management, supervision, business purpose, operation, customers, equipment, and work force are also relevant in determining alter ego status. See *Fallon-Williams Inc.*, 336 NLRB 602 (2001), *C.E.K. Industries Mechanical Contractors, Inc. v. NLRB*, 921 F.2d 350, 354 (1st Cir. 1990). While the Board considers whether one entity was created in an attempt to enable another to avoid its obligations under the Act, the Board has consistently held that such a motive is not necessary for finding alter ego status. *Crawford Door Sales Co.*, above. In looking at the various factors shared by the entities, the Board has noted that no one factor is controlling or determinative. *NLRB v. Welcome-American Fertilizer Co.*, 443 F.2d 19, 21 (9th Cir. 1971). Like the single employer doctrine, the existence of such status ultimately depends on “all circumstances of the case” and is characterized as an absence of an “arms’ length relationship found among unintegrated companies.” *Operating Engineers Local 627 (South Prairie Construction) v. NLRB*, 518 F.2d 1040, 1045–1046 (D.C. Cir. 1975), aff’d. in relevant part sub. nom.

The parties stipulated that Respondents Colacino Industries and Newark Electric 2.0 are alter egos and is a single employer enterprise. The threshold issue of the complaint is the relationship between Respondents Colacino Industries/Newark Electric 2.0 and Newark Electric. The General Counsel argues that the Respondents are bound by the Letter of Assent C signed by Respondent Newark Electric on the theory that all three companies are either a single employer or alter egos.

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In my findings, the totality of the evidence strongly supports the conclusion that Colacino Industries/Newark Electric 2.0 and Newark Electric are alter egos or a single employer. Colacino brought all the assets of Newark Electric in 2000 and funneled the assets to his newly created Colacino Industries. Colacino is the 100-percent owner of Colacino Industries and Newark Electric 2.0 (until it was dissolved in 2012). Colacino also continued to use the name of Newark Electric in his commercial and business dealings with his customers and the general public.

Colacino Industries was created to perform commercial and residential software and to design and build automation and integration systems, but also to perform electrical work.¹⁰ Contrary to the Respondents' assertions, Respondent Newark Electric was not a dormant company after 2000 when the assets were sold to Colacino. The record shows that Newark Electric was not legally dissolved until 2013, but the company continued to operate and generate business as evidenced by the invoices and customer purchase orders that mostly reflected the Newark Electric logo and payments that were addressed to both Respondents Colacino Industries and Newark Electric. It is clear that invoices and purchase orders were used interchangeably between Respondents Newark Electric and Colacino Industries.

Further, Colacino continued to use Respondent Newark Electric logo, stationery, and other identifying aspects as a division of Respondent Colacino Industries. Though Colacino denies ownership of Newark Electric, Colacino's business card given to Davis stated that James Colacino (and not Richard Colacino) as the president and CEO of Newark Electric. Colacino also testified that he wanted Newark Electric to be a division of Respondent Colacino Industries and some stationery logos reflected this fact.¹¹ Most significantly, Colacino ultimately made all the personnel decisions in the hiring and retaining of employees and in the management of all three companies.

In addition, Respondents Colacino Industries and Newark Electric were housed in the same premises at 126 Harrison Street. The entrance doors to 126 Harrison Street have the logos of Newark Electric and Colacino Industries; there was one facsimile, copier and printer machine for all three companies and one phone system with Newark Electric keeping its own phone number and incoming calls are identified through either the Newark Electric or Colacino Industries ID number; the Respondent Colacino Industries company vans continued to display the Newark Electric logo; and communications by emails between the Respondents and the public were interchangeable between newarkelectric.com and colacino.com.

The record further shows that the employees of Colacino Industries completed their timesheets and job cards having the

Colacino and Newark Electric logos. Employees completing supply and parts requisition forms only showed the Newark Electric logo and one warehouse were used to provide the supplies for all three companies. The employer's contributions to the union funds had the name of Newark Electric.

Therefore, I find that at all material times, as alter egos, the Respondents Colacino Industries and Newark Electric have substantially identical management, business purpose, operating equipment, customers, purchases, premises, facilities, and supervision as well as common ownership. *Park Avenue Investments LLC*, 359 NLRB No. 134 (2013); *Crawford Door Sales Co.*, above.

I also find that at all material times, as a single employer, the Respondents Colacino Industries and Newark Electric have a common officer, ownership, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for each other; have interchanged personnel with each other, have engaged in common purchasing, and have held themselves out to the public as a single-integrated business enterprise. *Emsing's Supermarket, Inc.*, above; *Park Avenue Investments LLC*, above.¹²

B. Repudiation of the Collective-Bargaining Agreement

The Respondents argue that Newark Electric never signed a letter of assent with the Union and therefore, they are not bound by the collective-bargaining agreement. The Respondents maintain that the letter of assent was actually signed by Respondent Newark Electric 2.0. I disagree.

I find that the Letter of Assent C was signed by Respondent Newark Electric on February 24, 2011. The objective record

¹² In the alternative, the General Counsel argues that regardless of the alter egos/single employer status of Respondents Colacino Industries and Newark Electric, the Board has jurisdiction over Respondent Newark Electric as a separate entity. The counsel for the General Counsel alleges that the Board has jurisdiction over Respondent Newark Electric because it is a corporation with an office and place of business in New York and that it had purchased and received goods valued in excess of \$50,000 from other enterprises located within the State of New York and from points outside of the State of New York. (Tr. 162–166.) The Respondents deny that Respondent Newark Electric is a corporation with an office and place of business in New York and maintain that Respondent Newark Electric has not operated since 2000. (Tr. 162–165.) The General Counsel had subpoenaed the Respondents' invoices. Rather than to submit the entire record of invoices, the parties agreed that the General Counsel would submit a sample of all invoices for 2011 and 2012. (Tr. 163–165.) A review shows that the invoices during a representative sample of jobs from August 28, 2011 to October 20, 2012, indicated that Respondent Newark Electric was operating and performing jobs with gross revenues valued in excess of \$100,000 dollars from various entities engaged in interstate commerce. The invoices contained the logo of Newark Electric as being a division of Colacino Industries. There is no mention of Newark Electric 2.0 on any of the invoices. (GC Exhs. 26, 27.) Respondent Newark Electric in conducting its business operations and performed services valued in excess of \$50,000 from enterprises located within the State of New York has engaged in interstate commerce. As such, I agree with the General Counsel and find that the Board has jurisdiction over Respondent Newark Electric as a separate enterprise engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

¹⁰ Colacino had testified that his programmers would also perform electrical work although he insisted that all electrical work was being performed by the Respondent Newark Electric 2.0.

¹¹ Even assuming that formal ownership of Respondent Newark Electric was with Richard Colacino, during the period of formal ownership of Newark Electric, the active control of both companies was in the hands of James Colacino. This satisfies the element of common ownership. See *Kenmore Contracting Co.*, 289 NLRB 336 (1988); also *Milford Services, Inc.*, 294 NLRB 684 (1989).

shows that the Letter of Assent C signed on February 24, 2011, had the name of the firm as "Newark Electric;" the name of the individual signing on behalf of Newark Electric was "James R. Colacino;" his title under his signature was "CEO;" and the Federal tax identification number provided was for Newark Electric. The objective record also shows that Newark Electric 2.0 was not incorporated until March 8, 2011, and did not have its own Federal tax number in February.

Colacino said it was always his intention to sign Newark Electric 2.0 to the letter of assent. Colacino testified that he was anxious to sign the letter of assent because Davis had been pressing him to do so for several years and paid little attention to the information contained in the letter. He also said that Newark Electric 2.0 was mentioned several times during the signing as the company for the letter of assent.

I do not credit the testimony of Colacino on this point. I find that Colacino's testimony that Newark Electric 2.0 had signed the Letter of Assent C lacks credibility.¹³ At the time that the Letter of Assent C was signed, Colacino knew that Newark Electric 2.0 did not exist or at best, he was in the process of incorporating the new company. Colacino also knew that Newark Electric 2.0 did not have a Federal tax number at the time of the February signing. Colacino denied being an officer of Newark Electric, but nevertheless signed the letter as the CEO of Newark Electric and had provided a business card to Davis indicating he was the president and CEO of Newark Electric. Colacino (or for that matter, Richard Colacino, who was also present at the signing) could have raised all this misinformation to the Union so that the letter could be corrected to his satisfaction. Instead, Colacino did not raise any "red flags" and proceeded to sign the Letter of Assent C.

Colacino then signed Respondent Colacino Industries to a Letter of Assent C with the Union on July 20, 2011. Davis agreed to a second Letter of Assent C with Respondent Colacino Industries because he understood the arrangement to be purely an administrative and bookkeeping matter. Nevertheless, Davis did check and received approval from IBEW for a second letter of assent.

Approximately 9 months later, on April 12, Colacino noticed the Union and NECA that Colacino Industries was terminating its letter of assent, effective May 26. There is no dispute that Colacino Industries timely and effectively terminated its letter of assent. Colacino then attempted to terminate the letter of assent of Newark Electric on June 29, which he believed it to be for Newark Electric 2.0. On July 9, Bliss called Davis that the Respondents intended to be a nonunion contractor, effectively repudiating the collective-bargaining agreement.

I find, however, that inasmuch as Respondents Colacino Industries, Newark Electric 2.0, and Newark Electric are alter egos/single employer, Respondent Colacino is bound to the then-current master agreement through its letter of assent with Newark Electric, which was not effectively terminated by Colacino on June 29. Once Newark Electric signed the letter of

assent on February 24, 2011, it could not terminate the letter prior to August 24, 2011. After August 24, 2011, Newark Electric had until February 24, 2012, to terminate the letter of assent by providing notice of termination to the NECA and Union no later than January 24, 2012 (30 days prior to the termination date). After February 24, 2012, Newark Electric was tied to the master agreement until May 31, 2012, the expiration date of the agreement. Newark Electric could have elected to terminate the collective-bargaining relationship if notice was provided at least 100 days prior to the expiration date (May 31) of the master agreement. However, since Newark Electric failed to provide such timely notice to the NECA and the Union, Newark Electric was bound until May 31, 2015, which is the expiration date of the then successor agreement.

The Respondent Newark Electric did not avail itself of either options to terminate the letter of assent and therefore, it could not repudiate the collective-bargaining agreement. Having found Respondents Colacino Industries, Newark Electric 2.0, and Newark Electric is a single employer/alter egos, it follows that Respondent Colacino Industries has an obligation to bargain with the Union and is bound by the NECA collective-bargaining agreement that Newark Electric signed through the letter of assent. *Concourse Nursing Home*, 328 NLRB 692 (1999); *Crawford Door Sales Co.*, above.

Therefore, since the Respondents have failed and refused to apply the terms and conditions of the collective-bargaining agreement between the NECA and the Union, they have failed and refused to bargain in good faith with the exclusive bargaining representative of their employees within the meaning of Section 8(d) of the Act, in violation of Section 8(a)(5) and (1) of the Act. *Barnard Engineering Co.*, 295 NLRB 226 (1989) (ordering the respondent and alter ego to comply with agreement in effect at the time and subsequent agreement and further ordered both respondents to pay the wage rates and make contributions to the fringe benefit funds as provided in those agreements).

I find that the Respondents' admitted failure to recognize and bargain with the Union, their failure to maintain the wages, hours, and other working terms and conditions of the NECA collective-bargaining agreement, and their failure to apply the NECA agreement to unit employees violated Section 8(a)(5) and (1) of the Act.

C. The Respondents' Defenses

The Respondents also argue several additional defenses in its answer. The Respondents argue that Colacino agreed to sign off the letter of assent with Respondent Colacino Industries because Davis represented to him that one individual could not have two letters of assent C and the Letter of Assent C with Newark Electric 2.0 would have to be dissolved or "go away" so that there was only one single Letter of Assent C. The Respondents also argued that Davis "bullied" Colacino in signing the first Letter of Assent C with Newark Electric.

I find that Colacino was not forced, duped, or fraudulently induced in signing the Letters of Assent C for Newark Electric and Colacino Industries. I find no meritorious evidence that Davis had agreed to redate the Letter of Assent C for Newark Electric or that he represented to Colacino that the first Letter

¹³ The General Counsel notes that a Board judge had found that Colacino lacked credibility in his testimony in another case. (GC Br. at 25.) However, my credibility findings are based on this record and not on the findings of another judge.

of Assent C was superseded by the signing of the Letter of Assent C for Colacino Industries.

With regard to the first Letter of Assent C with Newark Electric, it is clear that Davis never forced Colacino to sign the letter in February 2011. Bliss testified that Davis was friendly but persuasive. Colacino and Davis testified that there was much fanfare over the signing of the letter and the parties, including Richard Colacino, then went out to dinner to celebrate. This does not support the Respondents' contention of being bullied or forced by the Union to sign the Letter of Assent C.

It is also equally clear from the record that Colacino knew he could not timely terminate the Letter of Assent C for Newark Electric and would be bound by the successor bargaining agreement until 2015. However, by claiming that the first letter of assent was dissolved, superseded, or redated with the Letter of Assent C for Colacino Industries, Colacino believed that he could then return to a nonunion shop once the Letter of Assent C for Colacino Industries was timely terminated.

I find Davis' testimony more worthy of belief than Colacino's testimony on this point. Davis testified that Colacino approached him about signing Respondent Colacino Industries because of administrative and bookkeeping problems. Davis credibly testified that he had to check with the IBEW for approval before agreeing to such an arrangement. I find that Davis' testimony is credible when he denied agreeing to dissolve the Letter of Assent C with Newark Electric. Signing up another company to the collective-bargaining agreement was Davis' goal as a union organizer. Here was his opportunity to recruit employees of Colacino Industries to the union. There was absolutely no conceivable business reason for Davis to agree on dissolving the Letter of Assent C with Newark Electric.

With regard to the redating of the Letter of Assent C with Newark Electric to July 20, Davis also credibly denied telling Colacino that he had redated the Letter of Assent C. Colacino said that Davis called him "out of the blue" to tell him that he had redated the Letter of Assent C for Newark Electric.

I find that Davis never had a conversation about redating the first letter of assent or that it would be superseded with the signing of the Letter of Assent C with Colacino Industries. First, Davis simply did not have the authority to somehow dissolve the first letter of assent. As such, there was no detrimental reliance on the part of Colacino because the conversation about redating the first letter of assent never occurred. Colacino presented no evidence to corroborate such a conversation with Davis. Second, Colacino never received or requested a copy of the redated letter of assent, which he would have received if the document was redated. Third, there are no notes to memorialize the conversations about redating the letter, no recollected dates of the alleged conversations between Colacino and Davis about redating or superseding the Letter of Assent C for Newark Electric, and only vague recollections as to when and what exactly occurred regarding the redating. Colacino said that he was focused on other matters and just accepted Davis' purported representation that the letter was redated. His testimony is not worthy of belief. Colacino is an astute businessman. He brought the assets of Newark Electric and created at least two other companies. He was anxious to sign letters of

assent C for Newark Electric and Colacino Industries. To maintain that he was not paying attention to the information in signing the first letter of assent for Newark Electric and that he did not follow up to ensure that the letter was actually redated makes his testimony unworthy of belief.

D. The Layoff of Anthony Blondell

The counsel for the General Counsel alleges that Blondell was constructively discharged when the Respondents conditioned his continued employment on working for a nonunion company in violation of Section 8(a)(3) and (1) of the Act.

Blondell is an electrician and a member of the Union for the past 28 years. In 2006, he was sent by the Union to work for Colacino to help out for 4 months. Subsequently, Blondell started his own company and became a subcontractor for Colacino from May 2007 until November 2010. After Colacino signed the letter of assent for Respondent Newark Electric, Blondell began working for Colacino from March 2011 to July 2012. Blondell said that after Colacino signed the letter of assent for Respondent Colacino Industries, his pay statements reflected the name of Newark Electric 2.0 and the name of Respondent Colacino Industries until he was laid-off. (Tr. 106, 107; GC Exh. 20.)

Blondell testified that he was terminated on June 29 after receiving his final paycheck from Respondent Colacino Industries.¹⁴ The letter of termination stated that Blondell was discharge for disclosing company information without consent. The termination letter was signed by Colacino. (Tr. 108, GC Exh. 21.) Blondell said he was surprised with his discharge and went to see Bliss, the office manager. According to Blondell, Bliss told him that Blondell allegedly purloined a document off the desk in Colacino's office. Blondell denied taking any document and wanted to meet with Colacino. Blondell met with Colacino the following day, on June 30. Blondell explained to Colacino that he did not take any documents and that Colacino should have spoken to him first before terminating him. Colacino believed Blondell, apologized to him and rescind the letter of termination. Blondell's termination was rescinded by letter dated July 5. (Tr. 109, 110, 115; GC Exh. 22.)

Blondell testified that after his termination was resolved, he continued to discuss with Colacino about other matters. Blondell said that Colacino told him that he was having difficulties making the letter of assent work and that July 20 was going to be the last date for the letter of assent for Respondent Colacino Industries. Blondell said that about an hour into their meeting, Barra arrived and became part of the conversation regarding the July 20 date. Blondell said that Barra was also aware that Colacino intended to terminate the letter of assent on July 20. (Tr. 110-113).¹⁵

Blondell testified that as the July 20 date approach for the termination of the letter of assent for Respondent Colacino

¹⁴ The termination of Blondell, although initially filed as a charge by the Union, was subsequently not alleged in the complaint of the General Counsel. (Tr. 99, 100.)

¹⁵ Davis testified above that he was trying to reach Colacino when he received a telephone call from Barra. It was at the June 30 meeting that prompted Barra to make a call to Davis to arrange a meeting with the Union for July 2.

Industries, he asked Colacino on either July 17 or 18 regarding the status of his employment. Blondell asked whether it was the intention of Colacino to lay him off on July 20. Blondell said he was concerned whether he would be still working or be laid-off and would have to look for work in the union hall. According to Blondell, Colacino told him that assuming no deal was made by him and the Union (to keep a union shop), Blondell would be laid-off. Blondell said that he accepted this explanation from Colacino because he "was a union employee, and if he was going nonunion, there wasn't any way I could work for him." (Tr. 116, 117.) Blondell admitted that Colacino never told him to quit. (Tr. 148.)

The record shows that Blondell was laid-off due to the lack of work by Colacino on July 20. (GC Exh. 23.) Blondell testified that there was work for him to perform even though the notice cited a lack of work for his layoff. Blondell also testified that Barra (and Bush) was not laid-off by Colacino. When asked why, Blondell said that he assumed that Barra was not laid-off because Barra had resigned his union membership and could continue working for a nonunion shop. (Tr. 117-119.)

In contrast, Colacino testified that he had no intention to layoff Blondell. Colacino said that Blondell approached him about his employment status because Blondell was aware of the termination date of the collective-bargaining relationship with the Union. Colacino testified that Blondell told him that he had to lay him off for lack of work. Colacino allegedly replied to Blondell that he did not have a lack of work, but Blondell insisted for Colacino to lay him off. According to Colacino, the Union was going to use Blondell as a tool against the company and Blondell did not relish seeing that happen to Colacino. (Tr. 227-230.)

Barra testified that he has been a union member for over 12 years and had served in several official positions with the Union prior to resigning in July 2012. He was aware that Colacino was about to rescind the letters of assent and go nonunion. Barra testified that he spoke to Davis about this and Davis informed him that "if Jim (Colacino) goes non-union . . . I'll pull you guys from him and then we'll see how much work he does with no employees." (Tr. 270-274.) Barra said that he needed to work and there were no guarantees that the Union would be able to find him another job once he was "pulled" from Colacino. Barra said that the decision to resign from the Union was made between himself and his spouse. Barra denied that Colacino told him to resign from the Union. (Tr. 274, 275.)

Barra said that he attended at least two meetings (approximately 2 weeks before July 20) with Colacino and Blondell and confirmed that he heard Blondell telling Colacino that he (Colacino) should "just lay him off for lack of work" so that Blondell could not be used as a "tool" by the Union arguing that Respondents were still a union company because Blondell was still working for Colacino. (Tr. 276-279.)

Discussion

In *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), the Board announced the following causation test in all cases alleging violations of Section 8(a)(3) and (1) turning on employer motivation. The General Counsel must first make a *prima facie*

showing to support the inference that protected conduct was a "motivating factor" in the employer decision. On such a showing, the burden shifts to the employer to demonstrate that the same action would have taken place even in the absence of the protected conduct. The United States Supreme Court approved and adopted the Board's *Wright Line* test in *NLRB v. Transportation Management Corp.*, 462 U.S. 393, 399-403 (1983). In *Manno Electric*, 321 NLRB 278 fn. 12 (1996), the Board restated the test as follows

The General Counsel has the burden to persuade that anti-union sentiment was a substantial or motivating factor in the challenged employer decision. The burden of persuasion then shifts to the employer to prove its affirmative defense that it would have taken the same action even if the employee had not engaged in protected activity.

Under the NLRA, a traditional constructive discharge occurs when an employee quits because his employer has deliberately made the working conditions unbearable and it is proven that (1) the burden imposed on the employee caused and was intended to cause a change in the employee's working conditions so difficult or unpleasant that the employee is forced to resign, and (2) the burden was imposed because of the employee's union activities. *Grocers Supply Co.*, 294 NLRB 438, 439 (1989). Here, under the Hobson's choice theory, an employee's voluntary quit will be considered a constructive discharge when an employer conditions an employee's continued employment on the employee's abandonment of his or her Section 7 rights and the employee quits rather than comply with the condition. *Hoerner Waldorf Corp.*, 227 NLRB 612, 613 (1976).

The evidence establishes that just prior to July 20, Respondent Colacino Industries terminated Blondell and at least two other bargaining unit employees voluntarily resigned their union membership in order to continue working for Colacino. Blondell credibly testified that he approached Colacino and asked whether he would be laid-off on July 20, knowing that Colacino was terminating the letter of assent and the collective-bargaining agreement on that date. Blondell credibly testified that Colacino replied by saying he would have to terminate Blondell's employment by laying him off. Given this choice, Blondell accepted his layoff because he wanted to remain with the union. I do not credit the testimony of Colacino and Barra on this point. It is difficult for me to reasonably believe that Blondell asked to be laid-off as testified by Barra and Colacino. Blondell credibly testified that he was in the middle of completing a project and that there was work available for him to perform. It is also difficult for me to accept the testimony of Colacino and Barra that Blondell would agree to be laid-off by Colacino so he could not be used as a tool between the union and Colacino.

Inasmuch as the Respondents had unlawfully repudiated the collective-bargaining agreement and withdrew recognition of the Union, it was clear that Colacino was intent in going with a nonunion shop and did not want to continue employing Blondell. The Respondents failed to prove that regardless of Blondell's union affiliation or activities, he would have been

NEWARK ELECTRIC CORP.

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laid-off due to a lack of work. As such, the Respondents failed to satisfy their *Wright Line* rebuttal burden. In essence, Colacino offered Blondell the disabling choice of being terminated or accepting terms and conditions of employment that would be substantially reduced if he commenced working for Respondent Colacino Industries in a nonunion setting. This is a classic case of discriminating against the employee because of his current terms and conditions of employment by discouraging membership in a labor organization. *Engineering Contractors, Inc.*, 357 NLRB No. 127, slip op. at 6 (2011).

Under these circumstances, I find that the Respondents violated Section 8(a)(3) and (1) of the Act when they unlawfully terminated the employment of Blondell.

CONCLUSIONS OF LAW

1. At all material times, Respondents Colacino Industries, Newark Electric 2.0, and Newark Electric are corporations with an office and place of business located at 126 Harrison Street in Newark, New York, and have been engaged in the construction industry as electrical contractors.

2. At all material times, Respondents Colacino Industries, Newark Electric 2.0, and Newark Electric have had substantially identical management, business purposes, operations, equipment, customers, and supervision, as well as ownership.

3. Based on its operations described above and the parties' stipulation, Respondent Newark Electric, Respondent Newark Electric 2.0, and Respondent Colacino Industries constitute a single-integrated business and have been at all material times alter egos and a single employer within the meaning of the Act.

4. During the 12 months preceding issuance of the complaint, in conducting its operations described above, the Respondents provided services valued in excess of \$50,000.

5. The Respondents constitute an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

6. The International Brotherhood of Electrical Workers, Local 840 is a labor organization within the meaning of Section 2(5) of the Act.

7. Since July 20, 2012, the Respondents have failed and refused to apply the terms and conditions of the February 24, 2011 Letter of Assent C and the June 1, 2012 through May 31, 2015 collective-bargaining agreement with the IBEW and NECA, Finger Lakes Chapter, to the employees in the appropriate bargaining unit in violation of Section 8(a)(5) and (1) of the Act.

8. By withdrawing recognition and repudiating the collective-bargaining agreement with Local 840, and by failing to continue in effect all the terms and conditions of employment of its collective-bargaining agreement including by ceasing to make contributions to the benefit funds, the Respondents have been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(5) and (1).

9. By discharging employee, Anthony Blondell, the Respondents have been discriminating in regard to the hire, tenure, or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(3) and (1) of the Act.

10. The Respondents' above described unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondents are a single employer or alter egos, its officers, agents, successors, and assigns, I shall order them to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondents violated Section 8(a)(5) and (1) of the Act by refusing to recognize the February 24, 2011 Letter of Assent C and collective-bargaining agreement that is in effect from June 1, 2012, through May 31, 2015, with the IBEW, Local 840 and the Finger Lakes Chapter, NECA, that establishes the terms and conditions of employees in the appropriate bargaining unit, I shall order the Respondents to comply with the Letter of Assent C and all the terms and conditions of employment of the collective-bargaining agreement.

Having found that the Respondents violated Section 8(a)(5) and (1) of the Act by withdrawing recognition from IBEW Local 840 and failing from July 20, 2012, to continue in effect all the terms and conditions of the IBEW and NECA agreement, I shall order the Respondents to recognize Local No. 840 as the exclusive bargaining representative of employees in the unit and to apply all the terms and conditions of the IBEW agreement, and any automatic extensions thereof. I shall also order the Respondents to make whole, unit employees for any loss of earnings and other benefits they may have suffered as a result of the Respondents failure to continue in effect all of the terms and conditions of the IBEW Local No. 840 agreement in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), *enfd.* 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons* and *Kentucky River Medical Center*, 356 NLRB No. 8 (2010).

Having also found that the Respondents violated Section 8(a)(3) and (1) of the Act by discharging Anthony Blondell, I shall order the Respondents to offer him full reinstatement to his former job or, if the job no longer exists, to a substantially equivalent job, without prejudice to seniority or any other rights or privileges previously enjoyed. Further, the Respondents shall make the aforementioned employee whole for any loss of earnings and other benefits suffered as a result of the discrimination against him. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons*, 283 NLRB 1173 (1987), plus daily compound interest as prescribed in *Kentucky River Medical Center*, above. The Respondents shall also be required to expunge from its files any and all references to the unlawful discharge of the aforementioned employee and to notify him in writing that this has been done and that the unlawful discharge will not be used against him in any way.

The Respondents shall file a report with the Social Security Administration allocating backpay to the appropriate calendar quarters. The Respondents shall also compensate Anthony Blondell for the adverse tax consequences, if any, of receiving one or more lump-sum backpay awards covering periods longer than 1 year. *Latino Express, Inc.*, 359 NLRB No. 44 (2012).

On these findings and of fact and conclusions of law and on

the entire record, I issue the following recommended¹⁶

1. Cease and desist from

(a) Refusing to honor the February 24, 2011 Letter of Assent C and collective-bargaining agreement that is in effect from June 1, 2012, through May 31, 2015, with the IBEW, Local 840 and the Finger Lakes Chapter, NECA, that establishes the terms and conditions of employees in the appropriate bargaining unit.

(b) Failing and refusing to bargain collectively in good faith with the Union, IBEW Local 840 as the Section 9(a) exclusive bargaining representative of the employees in the appropriate unit during the term of their collective-bargaining agreement and any automatic extensions thereof.

(c) Repudiating and failing and refusing to continue in effect all the terms and conditions of its collective-bargaining agreement with the IBEW Local 840 since July 20, 2012, and to make payments to the fringe benefit funds under the collective-bargaining agreement.

(d) Discharging and laying off employees by conditioning their employment in working in a nonunion company and by discouraging employees from engaging in concerted activities.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the purposes and policies of the Act.

(a) Give full force and effect to the terms and conditions of employment provided in the collective-bargaining agreement with the Union and make whole unit employees for any loss of earning and other benefits resulting from the Respondents' failure to honor the terms of the agreement in the manner set forth in the remedy section of this decision.

(b) Upon request by the Union, bargain collectively in good faith with the Union as the exclusive representative of the employees in the appropriate bargaining unit.

(c) Remit the fringe benefit funds payments which have become due and reimburse unit employees for any losses arising from the Respondent's failure to make the required payments in the manner set forth in the remedy section of this decision.

(d) Within 14 days from the date of the Order, offer Anthony Blondell full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges he previously enjoyed.

(e) Make Anthony Blondell whole, with interest, for any loss of earnings and benefits suffered by him as a result of his unlawful layoff.

(f) Preserve and, within fourteen (14) days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payments records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if

stored in electronic form, necessary to analyze the amount of backpay and other adjustments of monetary benefits due under the terms of this Order.

(g) Within fourteen (14) days, post at the Respondents' Newark, New York facility, a copy of the attached notice marked "Appendix."¹⁷ Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by the Respondents' authorized representative, shall be posted by the Respondents immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondents customarily communicates with its employees by such means. In the event that, during the pendency of these proceedings, the Respondents have gone out of business or closed the facilities involved in these proceedings, or sold the business or the facilities involved herein, the Respondents shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondents at any time since July 20, 2012.

(h) Within 21 days after service by the Region, file with the Regional Director a sworn certificate of a responsible official on a form provided by the Region attesting to the steps the Respondents have taken to comply.

Dated, Washington, D.C. January 6, 2014

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain in good faith with the collective-bargaining representative of our employees in the appropriate bargaining unit described below:

All employees performing work, as set forth in Article II of the January 1, 2011 to May 31, 2012 agreement between the

¹⁶ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

¹⁷ If this Order is enforced by a judgment of the United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

NEWARK ELECTRIC CORP.

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Union and the Finger Lakes, New York Chapter of NECA, and the June 1, 2012 to May 31, 2015 successor agreement between the Union and the Finger Lakes, New York Chapter of NECA, within the geographic area set forth in Article II of the same agreements.

WE WILL NOT fail and refuse to recognize and adhere to the collective-bargaining agreement dated June 1, 2012, through May 31, 2015, by failing to pay contractually established wage rates and failing to make contractually-required fund contributions to the unit described above.

WE WILL NOT lay off or condition your employment on working for a nonunion company.

WE WILL NOT in any similar manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL make whole our employees for any losses they may have suffered as a result of our refusal to honor the applicable collective-bargaining agreement by transmitting, with interest, the contributions owed on their behalf to the Union's funds.

WE WILL continue in force and effect the collective-bargaining agreement effective from June 1, 2012, through May 31, 2015.

WE WILL offer full and immediate reinstatement to Anthony Blondell to his former job or, if that job is no longer available, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges he previously enjoyed.

WE WILL make Anthony Blondell whole for any loss of earnings and other benefits he suffered as a result of our discrimination against him, plus interest.

WE WILL within 14 days from the date of the recommended Order, remove from our files any reference to Anthony Blondell's unlawful July 20, 2012 layoff and expunge it from our records, and within 3 days thereafter, we will notify him in writing that we have done so and that the layoff will not be used against him in any way.

NEWARK ELECTRIC CORP., NEWARK ELECTRIC 2.0, INC., AND COLACINO INDUSTRIES, INC.

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INTERNET
FORM NLRB-501
(2-08)

AMENDED

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

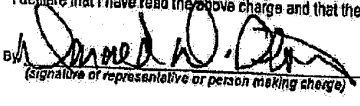
FORM EXEMPT UNDER 44 U.S.C. 3512

DO NOT WRITE IN THIS SPACE

Case
03-CA-088127Date Filed
10/25/12

INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT	
a. Name of Employer Newark Electric Corp., Newark Electric 2.0, Inc. and Colacino Industries, Inc., as a single employer and alter ego.	b. Tel. No. 315-331-0414
d. Address (Street, city, state, and ZIP code) 132 Harrison Street Newark, New York 14513	c. Cell No.
e. Employer Representative James R. Colacino, President	f. Fax No.
i. Type of Establishment (factory, mine, wholesaler, etc.) Electrical Contractor	g. e-Mail
j. Identify principal product or service	h. Number of workers employed
<p>k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (2) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.</p> <p>2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)</p> <p>The Employer has violated Sections 8(a) (1) and (3) of the Act, since on or about July 20, 2012, by laying off and/or constructively discharging Anthony Blondell because of the Employer's plan to work non-union.</p> <p>Since on or about July 20, 2012, the Employer has violated Section 8(a)(5) of the Act and Section 8(d) of the Act by abnegating its collective bargaining agreement mid-term with IBEW Local 840, the representative of the employer's employees in an appropriate bargaining unit.</p> <p>3. Full name of party filing charge (if labor organization, give full name, including local name and number) IBEW Local 840</p> <p>4a. Address (Street and number, city, state, and ZIP code) 68 Castle Street, PO Box 851 Geneva, NY 14456</p> <p>4b. Tel. No. 315-789-3330</p> <p>4c. Cell No.</p> <p>4d. Fax No. 315-789-1309</p> <p>4e. e-Mail</p> <p>5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) International Brotherhood of Electrical Workers, AFL-CIO</p> <p>6. DECLARATION</p> <p>I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.</p> <p>By  (Signature of representative or person making charge)</p> <p>Blitman & King LLP - Attorney (Print type name and title or office, if any)</p> <p>443 North Franklin Street, Suite 300, Syracuse, NY 13204</p> <p>10/25/12 (date)</p> <p>Tel. No.</p> <p>Office, if any, Cell No. 315-422-7111</p> <p>Fax No. 315-471-2623</p> <p>e-Mail</p>	

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

TOTAL P.02



United States Government

NATIONAL LABOR RELATIONS BOARD

Office of the Executive Secretary

1015 Half Street, SE

Washington, DC 20570

Telephone: 202/273-1949

Fax: 202/273-4270

www.nlrb.gov

July 18, 2017

Re: *Newark Electric Corp., et al. v. NLRB*,
unpublished Order (D.C. Cir. Decided July 14,
2017), *remanding*
362 NLRB No. 44 (March 26, 2015)
Board Case No. 03-CA-088127

Edward A. Trevvett, Esq.
Harris Beach LLC
99 Garnsey Road
Pittsford, NY 14534-4565

Donald D. Oliver, Esq.
Blitman & King, LLP
443 N Franklin Street Suite 300
Syracuse, NY 13204-5412

Paul Murphy, Esq.
National Labor Relations Board
Niagara Center Building
30 South Elmwood Avenue, Suite 630
Buffalo, NY 14202-2465

Dear Counsels:

This is to advise you that the Board has decided to accept the remand from the Court of Appeals in the above proceeding and that all parties, if they so desire, may file statements of position with respect to the issues raised by the remand.

Statements of position must conform to Section 102.46(h) of the Board's Rules and Regulations, and must be received by the Board in Washington, D.C. on or before August 15, 2017. Thereafter, the Board will take whatever action is consistent with the Court's remand.

Very truly yours,

/s/ Farah Z. Qureshi
Associate Executive Secretary



United States Government
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, D.C. 20570
www.nlrb.gov

HAND-DELIVERED

Date: August 14, 2017

To: The National Labor Relations Board

Re: Newark Electric Corp., Newark Electric 2.0, and Colacino Industries, Inc.,
Case 03-CA-088127

Attached please find a Notice of Ratification regarding the above-cited case and the Affidavit of Service establishing that all parties were served with the Notice and this letter. I request that the Notice of Ratification be placed in the case record.

Regards,

/s/ Richard F. Griffin, Jr.

General Counsel

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ORDER SECTION

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

Newark Electric Corp., Newark Electric 2.0, and
Colacino Industries, Inc.,

Case 03-CA-088127

and

IBEW Local 840

NOTICE OF RATIFICATION

The prosecution of this case commenced under the authority of Acting General Counsel Lafe E. Solomon during the period after his nomination on January 5, 2011, while his nomination was pending with the Senate, and before my confirmation on November 4, 2013.

On March 21, 2017, the United States Supreme Court held that Acting General Counsel Solomon's authority under the Federal Vacancies Reform Act (FVRA), 5 U.S.C. §§ 3345 et seq., ceased on January 5, 2011, when the President nominated Mr. Solomon for the position of General Counsel. *NLRB v SW General, Inc.*, 580 U.S. ___, 137 S. Ct. 929 (March 21, 2017).

I was confirmed as General Counsel on November 4, 2013. After appropriate review and consultation with my staff, I have decided that the issuance of the complaint in this case and its continued prosecution are a proper exercise of the General Counsel's broad and unreviewable discretion under Section 3(d) of the Act. Congress provided the option of ratification by expressly exempting, pursuant to FVRA Section 3348(e)(1), "the General Counsel of the National Labor Relations Board" from the FVRA provisions that would otherwise preclude the ratification of certain actions of other persons found to have served in violation of the FVRA.

For the foregoing reasons, I hereby ratify the issuance and continued prosecution of the complaint.

Date: August 14, 2017

/s/ Richard F. Griffin, Jr.
Richard F. Griffin, Jr.
General Counsel

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 03**

Newark Electric Corp., Newark Electric 2.0, and
Colacino Industries, Inc.,

Case 03-CA-088127

and

IBEW Local 840

**AFFIDAVIT OF SERVICE OF: Notice of Ratification of Complaint and Prosecution of
Complaint and Letter to the Board regarding this Ratification.**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on August 14, 2017 I served the above-entitled document(s) by regular mail, as noted below, upon the following persons, addressed to them at the following addresses:

JAMES COLACINO, PRESIDENT
NEWARK ELECTRICAL/COLACINO
INDUSTRIES
126 HARRISON ST
NEWARK, NY 14513-1200

IBEW Local 840
PO Box 851 1401 Routes 5 And 20
Geneva, NY 14456-0851

Edward A. Trevvett Esq., Partner
HARRIS BEACH LLC
99 Garnsey Road
Pittsford, NY 14534-4565

Donald D. Oliver Esq.
Blitman & King, LLP
443 N Franklin St Ste 300
Syracuse, NY 13204-5412

August 14, 2017

Date

Crystal Roberts
Designated Agent of NLRB

Name

/s/ Crystal Roberts

Signature

A-32



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ORIGIN IDONHA (565) 419-6600
EDWARD A. TREVYTH
HARRIS BEACH PLLC
99 GARNSEY ROAD

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ACTWGT 0.50 LB
CAD 107526335/IVSX12750

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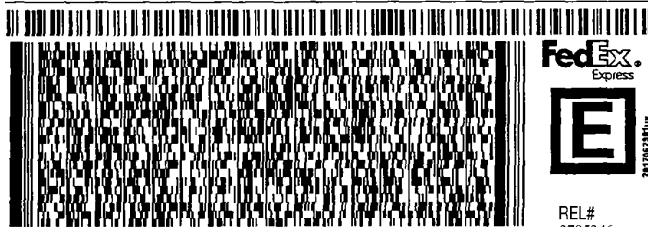
BILL SENDER

TO FARAHZ. QURESHI
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE EXECUTIVE SECRETARY
1015 HALF STREET, SE
WASHINGTON DC 20570

(202) 273-1949
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PO

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HARRIS BEACH

ATTORNEYS AT LAW

99 GARNSEY ROAD
PITTSFORD, NY 14534
(585) 419-8800

EDWARD A. TREVVETT

DIRECT (585) 419-8643
FAX (585) 419-8817
ETREWETT@HARRISBEACH.COM

September 13, 2017

Via Federal Express - Priority Overnight
Tracking No. 7877 1725 6953

National Labor Relations Board
Office of the Executive Secretary
1015 Half Street, SE
Washington, DC 20570
Attn: Farah Z. Qureshi

RE: *Newark Electric Corp., et al v. NLRB*, unpublished Order (D.C. Cir, Decided July 14, 2017) remanding 362 NLRB No. 44 (March 26, 2015)
Board Case No. 03-CA-088127

Dear Associate Executive Secretary Qureshi:

Enclosed please find an original and four copies of Respondent Colacino Industries, Inc.'s Position Statement regarding the above-referenced matter.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,

HARRIS BEACH PLLC

:J-..£-e wdt#16

Edward A. Trevvett

EAT:ac
Encl.

cc: Paul Murphy, Esq. - via email only paul.murphy@nlrb.gov
Donald D. Oliver, Esq. - via email only ddoliver@bklawvers.com

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRD REGION

NEWARK ELECTRIC CORP.,
NEWARK ELECTRIC 2.0, INC.,
AND COLACINO INDUSTRIES, INC.,
a single employer and/or alter egos

and

Case No. 3-CA-088127

INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS,
LOCAL 840

RESPONDENT COLACINO INDUSTRIES, INC.'S
POSITION STATEMENT

Background

Respondents, Newark Electric Corp., Newark Electric 2.0, Inc., and Colacino Industries, Inc. ("Colacino" or "Respondents") hereby file their Position Statement as requested by the Office of the Executive Secretary. This entire case was vacated by the United States Court of Appeals for the District of Columbia and remanded for further proceedings before the Board in *Newark Electric Corp et al , v NLRB*, Case Nos. 15-1111 and 15-1162 (July 14, 2017). By letter dated July 18, 2017, Respondents were advised by the NLRB's Office of the Executive Secretary that the Board was accepting the remand from the D.C. Circuit Court of Appeals in this

proceeding and advised Respondents that they could file a statement of position with respect to the issues raised by the remand on or before August 15, 2017. Respondents' date for filing a position statement was subsequently extended to September 14, 2017. Before either the original or extended deadline for submitting a position statement was up, however, General Counsel inexplicably issued a Notice of Ratification in this matter on August 14, 2017.

As a threshold matter, it is important to note that this case is unlike any of the other cases upon which the General Counsel may rely because it does not simply deal with a lack of a Board quorum as in *NLRB v Noel Canning*, 134 S. Ct. 2550 (2014) or the assertion that all the Board elected to issue decisions with only 2 members as in *Laurel Baye Healthcare of Lake Lanier, Inc v NLRB*, 564 F.3d 469 (D.C. Cir. May 1, 2009). The *Laurel Baye* case is arguably the same type of issue as in *Noel Canning*. This case also does not involve a run of the mill dispute between a lawfully appointed Board and General Counsel who have a disagreement on a particular point of law with the Circuit Courts and have a decision vacated and remanded. *Lancaster Symphony Orchestra v NLRB*, 2014 U.S. App. LEXIS 20161 (D.C. Cir. Oct. 21, 2014). While the General Counsel could cite hundreds or thousands of these types of cases they are all distinguishable from the case at bar because all of those cases deal with the actions of the final decision maker and that is the Board itself. These above cited cases were actions taken by the Board. Thus, the decisions were the only matter determined to be unlawful. As discussed below, this case involves a complete lack of jurisdiction to initiate a legal proceeding of any kind against Respondents. That being the case there is nothing that can be ratified or

affirmed by the Board at this point. The NLRB has not even established basic personal jurisdiction over Respondents, as Respondents have maintained from the beginning when they raised their defenses based on the FVRA in their answer to the complaint. Moreover, although the Respondents have raised the FVRA defense with regard to General Counsel Solomon's lack of legal authority to file a complaint against them, the General Counsel throughout the litigation never once sought the protection of the exemptions under Federal Vacancies Reform Act ("FVRA"), 5 U.S.C. § 3345 *et seq*. At no time throughout the proceedings at bar has the General Counsel or Board ever once claimed or asserted that defense. In fact, General Counsel Griffin has for years argued that FVRA did not even apply. See *SW General, supra*

General Counsel and the Board Have No Legal Authority to Simply Ratify the Prior Decisions in This Case.

The D.C. Circuit Court of Appeals' Order vacating the Board's actions in this case has legal meaning and consequences. The actions of former General Counsel Lafe Solomon have been determined to be *ultra vires* since he had no authority to act. Since Mr. Solomon had no authority to act the NLRB has never established jurisdiction over Respondents. Therefore, the entire prosecution of the case was unlawful. The issuance of the Complaint was unlawful. The trial scheduled by the General Counsel was unlawful. The trial itself was unlawful. The decision by the Administrative Law Judge ("ALJ") was unlawful. The appeal to the NLRB was unlawful. The decision by the Board in affirming in most part the ALJ decision was unlawful. The appeal of the case to the Circuit Court in D.C. was unlawful. All these unlawful acts have resulted in the Order by the D.C. Circuit Court of Appeals that

vacated the Board's decision because the General Counsels actions were -- unlawful. In sum, when D.C. Circuit Court of Appeals vacated the Board's decision on the basis of *SW Gen, Inc v NLRB*, 796 F.3d 67, 78-82 (DC Cir. 2015), *affd.*, 580 U.S. ___, 137 S. Ct. 929 (2017) everything that former General Counsel Solomon did earlier in this case was unlawful. Not just the Board's decision - everything.

By vacating the Board's affirmance of the ALJ decision on the basis that General Counsel Solomon had no legal right to issue the Complaint against Respondent and General Counsel Griffin had no legal right to continue that same litigation, there is not only no Board decision, there is no ALJ decision. As stated above, *everything* that *both* the General Counsels did was unlawful as they acted without any legal authority. To "vacate" is defined as:

To vacate an order or a judgment is to "nullify or cancel; make void; invalidate." Black's Law Dictionary 1584 (8th ed. 2004).

Ferguson v Commonwealth, 51 Va. App. 427 (Va. Ct. App. Apr. 8, 2008).

The General Counsel obviously wishes that this case as like *Noel Canning* or *Laurel Baye* where the specific action of the Board was in error and its decision was vacated because of actions the *Board* took. However, it was not the Board who acted improperly in *SW General* and against the Respondents in the matter at bar. It was the General Counsel who acted unlawfully *ab initio*. The Board's only error was in accepting the arguments that the General Counsel made that everything that was done was lawful when in fact it was not.

Both the Board and the ALJ decision, which the Board had adopted in most part, were the decisions that were being appealed and were the ones vacated. Because of

the actions of General Counsel Solomon were unlawful, this entire case, from the beginning was unlawfully prosecuted. The General Counsel may try to argue that somehow, even though everything from the Complaint forward was unlawful, that it was only the final act by the Board that was unlawful. This is clearly a disingenuous argument because the entire case before the Court's in *SW General* concerned the actions of the *General Counsel* and *not the Board*. Both the ALJ and the Board followed the arguments made by the General Counsel who wrongfully argued they were lawfully prosecuting the cases. Thus, there is absolutely no legal authority for the General Counsel or Board to simply ratify what has been done in this case.

General Counsel and the Board waived Any Arguments They had under the FVRA That Would Permit Ratification in This Case.

The NLRB cannot avail itself of the FVRA's exemption clause, harmless error\or de facto officer doctrine because those defenses were waived by the NLRB in this case. In in *Hooks v Kitsap Tenant Support Svcs , Inc.*, 816 F.3d 550, 564 (9th Cir. 2016) the court held that the NLRB had waived these defenses because they were available at the time the NLRB filed its opening brief and yet were not raised. 816 F.3d at 564. The same is obviously true in this case which was pending at the same time as *Hooks*.

On August 14, 2017, the NLRB's General Counsel issued a Notice of Ratification in this case. In his Notice of Ratification General Counsel stated: "... I have decided that the issuance of the complaint in this case and its continued prosecution are a proper exercise of the General Counsel's broad and unreviewable discretion under Section 3(d) of the Act. Congress provided the option of ratification by expressly exempting, pursuant

to FVRA Section 3348(e)(1), 'the General Counsel of the National Labor Relations Board' from the FVRA provisions that would otherwise preclude the ratification of certain actions of other persons found to have served in violation of the FVRA." The NLRB, however, never raised a defense in this case based on the FVRA's exemption clause. The Ninth Circuit's held in *Hooks* that the FVRA exemption clause defense was waived by the NLRB because it was not raised. The *Hooks* case should collaterally estop General Counsel from ratifying the prior decisions in this case because the NLRB was a party in both proceedings and had every bit as much reason to litigate that issue before the Ninth Circuit in *Hooks* as in this case. Accordingly, based on the NLRB's failure to ever raise an FVRA exemption clause defense, it is submitted that the NLRB indisputably waived any arguments that it had in this case concerning the FVRA's exemption clause, and concomitantly could not simply rely on a defense that it waived in litigation as the sole basis for its Notice of Ratification.

The Complaint Should be D.ismissed Based on the Doctrine of Laches

When Respondents opposed the Board's motion to the D.C. Circuit Court of Appeals for a remand it raised the issue of laches. Respondents renew their objection to the Board taking any further action to prosecute this case based on the doctrine of laches and respectfully request that the Board dismiss the Complaint against Respondents in its entirety with prejudice. While laches has been viewed as an equitable defense, particularly since the merger of law and equity in 1938 it has become available in cases where there is no set statute of limitations. *Petrella v Metro-Goldwyn-Mayer, Inc* , 572 U.S ____ , ___, 134 S.Ct. 1662, 1673 (2014).

Although there is a set 6-month statute of limitations within which a party must file a charge with the NLRB, which both starts and limits the scope of the NLRB's investigation and possible prosecution of an unfair labor practice complaint, there is no set statute of limitations within which the NLRB must in turn file a complaint against a party. 29 U.S.C. §160(b). Thus it is submitted that the doctrine and legal defense of laches applies.

Applying laches in this case leads to the conclusion that the prosecution of Respondents should be discontinued and the Complaint dismissed. It has been over five years since the charge in this matter was filed. As discussed below, since the D.C. Circuit Court of Appeals vacated the Board's actions in this case the only proper course of action were the Board to wish to continue prosecuting this case would be to start from the beginning with a new hearing. The evidence and witnesses memories have plainly degraded over the course of the last five years and it would be manifestly unfair to the point of denying Respondents due process to relitigate this case at this point.

The Board Should Have Complete Briefs on the Laches and Ratification Issues

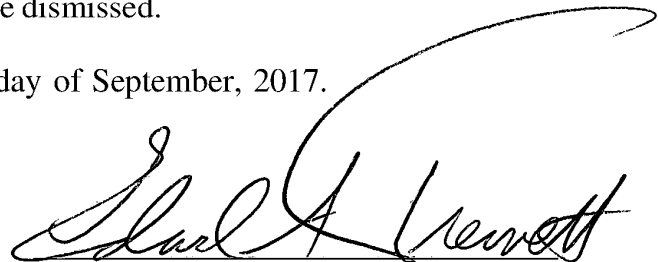
Within a very short time, the Respondents have been served with the Remand and the D.C. Circuit Court of Appeals' extraordinary immediate mandate as well as the Executive Secretary's request for this Position Statement. In addition, the Respondents have begun the process to appeal the remand. The Respondents have already filed in the D.C. Circuit Court of Appeals a Motion to Recall the Mandate and a Petition for Rehearing En Banc which has been served on the Board. It is submitted that the issues raised herein are too important for short position statements. Therefore, if

anything, this Board should require with proper Notice that the parties fully brief the issues of laches and whether or not the General Counsel, after years of engaging in unlawful *ultra vires* actions, where he never raised the FVRA defense, where the D.C. Circuit Court of Appeals vacated and nullified everything he did, can go forward and simply issue a Notice of Ratification.

This Case Should be Stayed Until the New General Counsel is Appointed

Respondents further submit and request that even before briefs are requested, given the long history of misconduct by General Counsel Salomon and General Counsel Griffin, this case should be held in abeyance to allow the new General Counsel and Board to review this matter and decide if it should proceed or the case should be dismissed. Next month, General Counsel Griffin will be gone. It is submitted that the new General Counsel and new Board should be given the opportunity to decide if this case should be dismissed.

Respectfully submitted this 13th day of September, 2017.



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Attorney for Respondents

NEWARK ELECTRIC CORP.,
NEWARK ELECTRIC 2.0, INC.,
AND COLACINO INDUSTRIE, INC.,
a single employer and/or alter egos

and

Case No. 3-CA-088127

INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS,
LOCAL 840

STATEMENT OF SERVICE

I, ANGELA CLARKE, the Legal Administrative Assistant to one of the attorneys for the Respondents, hereby certify that pursuant to Section 102.S(h) of the Board's Rules and Regulations I caused a true and complete copy of the foregoing Position Statement to be served, by causing same to be emailed to:

Paul Murphy, Esq. (via e-mail only paul.murphy@nlrb.gov)
Regional Director
National Labor Relations Board, Region 3
Niagara Center Building
130 S. Elmwood Avenue, Suite 630
Buffalo, New York 14202-2387

Donald D. Oliver, Esq. (via e-mail only ddoliver@bklawyers.com)
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Syracuse, New York 13204-5412

Jn@!?!&JJ —
Angelita Clarke

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**NEWARK ELECTRIC CORP.,
NEWARK ELECTRIC 2.0, INC.
AND COLACINO INDUSTRIES, INC.**

and

Case 03-CA-088127

**INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 840**

**COUNSEL FOR THE GENERAL COUNSEL'S
STATEMENT OF POSITION TO THE BOARD**

After accepting the D.C. Circuit's remand of this case in light of the Supreme Court's decision in *NLRB v. SW General*, 580 U.S. ___, 137 S. Ct. 929 (March 21, 2017), the Board permitted the parties to submit statements of position regarding the issues raised by the remand. Counsel for the General Counsel's position is that the ratification of the instant complaint by the validly appointed General Counsel, as well as his ratification of the prosecution of the complaint, effectively cures any defect which served as the sole basis for the remand. Counsel for the General Counsel further urges the Board to expeditiously affirm the decision and order it previously issued in this matter.

I. PROCEDURAL BACKGROUND AND FACTS

The charge in the instant case was filed by the International Brotherhood of Electrical Workers, Local 840 (Union) on August 28, 2012. After an investigation, a complaint was issued on May 21, 2013, alleging that Newark Electric Corporation, Newark Electric 2.0, Inc., and Colacino Industries, Inc. (Respondents) were alter egos and/or a single

employer. The complaint also alleged that Respondents violated Section 8(a)(1) and (5) of the Act by failing and refusing to adhere to letters of assent and the collective-bargaining agreement to which they had agreed to be bound. The complaint further alleged that Respondent Colacino Industries, Inc. had violated Section 8(a)(1) and (3) of the Act by conditioning the continued employment of employee Anthony Blondell on working for a non-union company.

A hearing was subsequently held before Administrative Law Judge Kenneth Chu and, on January 6, 2014, ALJ Chu issued a decision in which he found the violations as alleged in the complaint. Respondent filed exceptions with the Board. On March 26, 2015, the Board issued a decision in *Newark Electric Corp.*, 362 NLRB No. 44 (2015) in which it largely affirmed the ALJ's rulings, findings, and conclusions. Importantly, the Board held that the three companies are a single employer and alter egos, that they violated Section 8(a)(5) of the Act by failing to honor the letters of assent and collective-bargaining agreement by which they had agreed to be bound, and that Colacino Industries, Inc. violated Section 8(a)(3) of the Act by constructively discharging Blondell because he would not agree to work for a non-union employer.

In its answer to the complaint and on exceptions to the Board, Respondents timely raised an affirmative defense that the underlying complaint was not valid because the Acting General Counsel at the time the complaint was issued, Lafe Solomon, was improperly appointed under the Federal Vacancies Reform Act (FVRA), 5 U.S.C. § 3345 et seq. Respondents repeated this argument in petitioning the D.C. Circuit for review of the Board's order. The Board filed a cross-petition for enforcement, and the matter was held in abeyance pending the resolution of the same issue by the Supreme Court of the United States in *SW General, Inc. v. NLRB*, *supra*.

In its SW General decision, the Court determined that Solomon had no authority to issue complaints from January 5, 2011 forward, encompassing the issuance of the complaint in the instant matter. On motion from the Board, the D.C. Circuit remanded this case to the Board in an unpublished order. The order vacated the Board's decision in Newark Electric Corp., supra, and provided that "Petitioners may raise their laches argument on remand and seek judicial review if unsatisfied with the result."

On August 14, 2017, General Counsel Richard F. Griffin ratified the issuance of the complaint and the prosecution thereof in this matter. There is no dispute that Griffin's appointment to the position of General Counsel is valid.

II. ARGUMENT

The sole basis for the remand in this matter was the invalid appointment of Lafe Solomon as Acting General Counsel at the time the complaint issued. As the current General Counsel, whose appointment to this position is undisputedly valid, has since ratified the issuance of the complaint and approved its prosecution, the only defect has been cured. Accordingly, as the Board's prior decision in this matter found the violations as alleged in the now-valid complaint, and in the absence of contravening instructions from the D.C. Circuit, there is no impediment to the Board issuing a new decision and order finding that Respondents committed the unfair labor practices as alleged and as it previously found in Newark Electric Corp., supra.

A. Ratification of the Complaint Cures Any Defect Created by the Invalid Appointment of Acting General Counsel Solomon

The Court's decision in SW General v. NLRB, supra, established that actions taken by or on behalf of Acting General Counsel Solomon, including the issuance of complaints, were invalid once President Barack Obama nominated Solomon to the post of General Counsel. The Court's decision was based on its conclusion that Section 3345(b)(1) of the FVRA

prevented an official such as Solomon from continuing to serve in an acting capacity once his nomination was submitted to the Senate. *Id.*, slip op. at 18.

In *SW General*, the Court, while not directly addressing the issue, noted that “[t]he FVRA exempts ‘the General Counsel of the National Labor Relations Board’ from the general rule that actions taken in violation of the FVRA are void ab initio. 5 U.S. C. § 3348(e)(1).” *Id.*, slip op. at 7 fn. 2. Thus, the construction of the FVRA contemplates the very posture in which this case currently sits and explicitly provides that General Counsel Griffin can ratify actions such as the issuance of a complaint.

The Board has also squarely addressed this issue in other cases, and in each instance held that the General Counsel’s ratification cured such a defect in the complaint. For example, in *Advanced Life Systems, Inc.*, 364 NLRB No. 117, slip op. at 1 fn. 2. (August 27, 2016), the Board stated that because of “the independent decision of General Counsel Griffin to continue prosecution of this matter, we reject as moot the Respondent’s affirmative defense” regarding Solomon’s appointment as Acting General Counsel. See also *Bloomington’s, Inc.*, 363 NLRB No. 172 (April 29, 2016) (Board rejected a respondent’s attempt to have the General Counsel’s notification that he was ratifying the complaint and prosecution of that matter stricken from the record); *Somerset Valley Rehabilitation & Nursing Center*, 364 NLRB No. 43, slip op. at 1 fn. 4 (July 13, 2016) (Board noting that even if respondent’s motion to dismiss the complaint was timely, it would still deny it, as ratification of the complaint by General Counsel Griffin rendered respondent’s argument moot); See also, *Multiband EC, Inc.*, 363 NLRB No. 100 (January 21, 2016).

It is clear from the plain language of the FVRA, the Court’s decision in *SW General*, and the Board’s own decisions involving this precise issue that the ratification of a complaint and its prosecution by a validly appointed General Counsel is sufficient to cure any defect

arising from the appointment of Acting General Counsel Solomon. As General Counsel Griffin has informed the Board of his ratification of the prosecutorial actions in this matter, Respondents' affirmative defense in this regard is now moot.¹

B. The Board Should Affirm Its Previous Decision and Order

The sole reason for the remand in this case was to address the issue raised by the Court's decision in SW General. For the reasons discussed above, the Board should accept General Counsel Griffin's ratification of the complaint. Once it has done so, it should re-issue its prior decision in Newark Electric Corp., supra. As discussed by the ALJ and adopted by the Board in that case, Respondents are a single employer and alter egos. Respondents have also unlawfully repudiated letters of assent and a collective-bargaining agreement. Additionally, Respondents have unlawfully withdrawn recognition from the Union. Respondent Colacino Industries, Inc. has also violated Sections 8(a)(1) and (3) of the Act by constructively terminating employee Blondell by conditioning his continued employment on working for a non-union company. The Board's findings and conclusions in this regard should remain undisturbed, as they are based on both sound factual footing and legal precedent.

III. Conclusion

In sum, the Board should re-issue its decision and order regarding Respondent's unlawful conduct without modification. The narrow scope of the D.C. Circuit's remand was based on a procedural defect which has since been cured by the ratification of the issuance of

¹ To the extent that Respondents attempt to argue that the doctrine of laches should attach to this case, that argument should be rejected. It is well established that the doctrine of laches is "generally inapplicable to Board proceedings..." United Electrical Contractors Assn., 347 NLRB 1, 2-3 (2006), citing Roofing, Metal & Heating Associates, 304 NLRB 155, 160 (1991). See also Artcraft Upholstering Co., 228 NLRB 462, 462 (1977) ("[i]t is well settled that a defense of laches does not lie against an agency of the United States Government").

the complaint in this matter and the prosecution thereof by the validly appointed General Counsel. The Board's previous decision and order on these issues was properly reasoned and based on well-established legal principles, and therefore should be re-issued.

Dated at Buffalo, New York, this 14th day of September, 2017.

Respectfully submitted,

/s/ Linda M. Leslie

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**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRD REGION**

**NEWARK ELECTRIC CORP.,
NEWARK ELECTRIC 2.0, INC.
AND COLACINO INDUSTRIES, INC.,
a single employer and/or alter egos**

and

Case 03-CA-088127

**INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 840**

COMPLAINT AND NOTICE OF HEARING

This Complaint and Notice of Hearing, is based on a charge filed by International Brotherhood of Electrical Workers, Local 840 (Union). It is issued pursuant to Section 10(b) of the National Labor Relations Act, 29 U.S.C § 151 et seq. (Act) and Section 102.15 of the Rules and Regulations of the National Labor Relations Board (Board), and alleges that Newark Electric Corp., (Respondent Newark Electric), Newark Electric 2.0, Inc. (Respondent Newark 2.0), and Colacino Industries, Inc. (Respondent Colacino) (collectively, Respondents) have violated the Act as described below:

I

(a) The original charge in this proceeding was filed by the Union on August 28, 2012, and a copy was served by regular mail on Respondent Newark Electric and Respondent Colacino on the same date.

(b) The amended charge in this proceeding was filed by the Union on October 25, 2012, and a copy was served by regular mail on Respondent Newark Electric and Respondent Colacino on October 26, 2012.

II

(a) At all material times, Respondent Newark Electric, a corporation with an office and place of business located in Newark, New York, has been an electrical contractor in the construction industry.

(b) At all material times, Respondent Newark 2.0, a corporation with an office and place of business located in Newark, New York, has been an electrical contractor in the construction industry, and a provider of information-technology services.

(c) At all material times, Respondent Colacino, a corporation with an office and place of business located in Newark, New York, has been an electrical contractor in the construction industry, and a provider of information-technology services.

(d) During the past twelve months, Respondents, in conducting their business operations described above in paragraph II(a), (b), and (c), purchased and received at their Newark, New York facility, goods valued in excess of \$50,000 from other enterprises located within the State of New York, each of which other enterprises had received the goods directly from points outside the State of New York.

III

(a) At all material times, Respondents have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have administered a common labor policy; have shared common premises and facilities; have provided services to each other; have interchanged personnel with each other; have interrelated operations with common insurance, purchasing and sales; and have held themselves out to the public as a single-integrated business enterprise.

(b) At all material times, Respondents have had substantially identical management, business purposes, operations, equipment, customers, supervision, and ownership.

(c) About March 8, 2011, Respondent Newark 2.0 was established by Respondent Colacino as a disguised continuation of Respondent Colacino.

(d) About mid- to late-June 2011, Respondent Newark Electric was utilized by Respondent Colacino and Respondent Newark 2.0 as a disguised continuation of Respondent Colacino and Respondent Newark 2.0.

(e) Based on the operations and conduct described above in paragraph III(a) through (d), Respondents are, and have been at all material times, alter egos, and a single employer within the meaning of the Act.

IV

Based on the facts set forth above in paragraph II, Respondents have been employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

V

At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

VI

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondents within the meaning of Section 2(11) of the Act, and agents of Respondents within the meaning of Section 2(13) of the Act:

James Colacino	--	Owner, Chief Executive Officer, Respondent Colacino; Owner, President, Respondent Newark 2.0
Richard Colacino	--	Owner, Chief Executive Officer, Respondent Newark Electric

VII

The following employees of Respondents (the Unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All employees performing work, as set forth in Article II of the January 1, 2011 to May 31, 2012 agreement between the Union and the Finger Lakes, New York Chapter of NECA, and the June 1, 2012 to May 31, 2015 successor agreement between the Union and the Finger Lakes, New York Chapter of NECA, within the geographic area set forth in Article II of the same agreements.

VIII

(a) The Finger Lakes, New York Chapter, NECA, Inc., of the National Electrical Contractors Association (Association) is composed of employers engaged in the building and construction industry and exists for the purpose, *inter alia*, of representing its employer members in negotiating and administering collective-bargaining agreements.

(b) About May 17, 2010, the Union entered into a collective-bargaining agreement with the Association, effective from January 1, 2011 to May 31, 2012 (2011 Agreement).

(c) About May 18, 2012, the Union entered into a collective-bargaining agreement with the Association, effective from June 1, 2012 to May 31, 2015 (2012 Agreement).

IX

(a) About February 24, 2011, Respondent Newark Electric, an employer engaged in the building and construction industry, by James Colacino, executed a letter of assent whereby it agreed to be bound by the 2011 Agreement, and agreed to be bound to future agreements unless timely notice was given.

(b) Since about March 8, 2011, Respondent Newark 2.0, an employer engaged in the building and construction industry, by its conduct, manifested an intent to be bound by the

February 24, 2011 letter of assent, and the 2011 Agreement, and by its conduct, agreed to be bound to future agreements unless timely notice was given.

(c) By operation of the language in the February 24, 2011 letter of assent, Respondents are bound by the 2011 and 2012 Agreements.

(d) By entering into the letter of assent described above in paragraph IX(a) and by the conduct described above in paragraph IX(b), Respondents recognized the Union as the exclusive collective-bargaining representative of the Unit without regard to whether the Union's majority status had ever been established under Section 9(a) of the Act.

(e) At all material times, based on Section 9(a) of the Act, the Union has been the limited exclusive collective-bargaining representative of the Unit.

(a) Since about July 20, 2012, Respondents have refused to adhere to the 2012 Agreement.

(b) The terms and conditions of employment described above in paragraph X(a) are mandatory subjects for the purpose of collective bargaining.

(c) Respondents engaged in the conduct described above in paragraph X(a) without the Union's consent.

XI

(a) About July 20, 2012, Respondent Colacino conditioned the employment of its employee Anthony Blondell on working for a non-union company.

(b) By the conduct described above in paragraph XI(a) Respondents caused the termination of their employee Anthony Blondell.

(c) Respondents engaged in the conduct described above in paragraph XI(a) and (b) because the named employee of Respondents formed, joined and assisted the Union and engaged in concerted activities, and to discourage employees from engaging in those activities.

XII

By the conduct described above in paragraph XI, Respondents have been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

XIII

By the conduct described above in paragraph X(a) and (c), Respondents have been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act in violation of Section 8(a)(1) and (5) of the Act.

XIV

The unfair labor practices of Respondents described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

WHEREFORE, as part of the remedy for the unfair labor practices alleged above in paragraphs X, XI, XII, and XIII, the Acting General Counsel seeks an Order requiring Respondents, inter alia, to:

Preserve and, within 14 days of a request, provide at the office designated by the Board or its agents, a copy of all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay or other monetary amounts due under the terms

of such Order. If requested, the originals of such records shall be provided to the Board or its agents in the same manner.

Reimburse the amounts equal to the difference in taxes owed upon receipt of a lump-sum payment and taxes that would have been owed had there been no discrimination or unfair labor practices.

Immediately expunge from its files and records any reference that Anthony Blondell was discharged for cause and prohibiting Respondents from using the discharge against him in any way and to notify Anthony Blondell in writing, that it has done so.

The Acting General Counsel further seeks, as part of the remedy for the allegations in paragraphs X, XI, XII and XIII, that Respondents be required to submit the appropriate documentation to the Social Security Administration so that when backpay is paid, it will be allocated to the appropriate periods.

The Acting General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

ANSWER REQUIREMENT

Respondents are notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, they must file an answer to the complaint. The answer must be received by this office **on or before June 13, 2013 or postmarked on or before June 12, 2013**. Unless filed electronically in a pdf format, Respondents should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may be also filed electronically through the Agency's website. To file electronically, go to www.nlr.gov, click on **File Case Documents**, enter the **NLRB case number** and follow the detailed instructions. The responsibility for receipt and usability of the answer rest exclusively on the sender. Unless notification of the Agency's website informs users that the Agency's E-filing system is officially determined to be in technical failure because it is

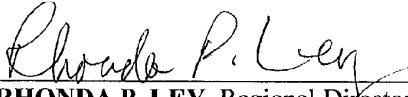
unable to receive documents for a continuous period of more than 2 hours, after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file an answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel of non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on August 26, 2013, at 1:00 p.m., at the National Labor Relations Board, Niagara Center Building, Sixth Floor, 130 South Elmwood Avenue, Buffalo, New York, and on consecutive days thereafter until concluded, a hearing will be held before an administrative law judge of the National Labor Relations Board. At the hearing, Respondents and any other party to this proceeding have the right to appear and present testimony regarding the allegations in the complaint. The procedures to be followed at hearing are

described in the attached Form NLRB-468. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

DATED at Buffalo, New York, this 30th day of May, 2013.



RHONDA P. LEY, Regional Director
National Labor Relations Board
Region 3
Niagara Center Building
130 South Elmwood Avenue, Suite 630
Buffalo, New York 14202

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 3**

**NEWARK ELECTRIC COR., NEWARK
ELECTRIC 2.0, INC. AND COLACINO
INDUSTRIES, INC., a single employer and /or alter
egos**

Case 03-CA-088127

and

**INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 840**

AFFIDAVIT OF SERVICE OF: Complaint and Notice of Hearing (with forms NLRB-4338 and NLRB-4668 attached)

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on May 30, 2013, I served the above-entitled document(s) by **certified or regular mail**, as noted below, upon the following persons, addressed to them at the following addresses:

JAMES COLACINO
NEWARK ELECTRICAL/COLACINO INDUSTRIES
126 HARRISON ST
NEWARK, NY 14513-1233

**CERTIFIED MAIL,
7009-2828-0004-2440-9748
RETURN RECEIPT REQUESTED**

EDWARD A. TREVVETT, ESQ.
HARRIS BEACH LLC
99 GARNSEY RD
PITTSFORD, NY 14534-4565

REGULAR MAIL

DONALD D. OLIVER, ESQ.
Blitman & King, LLP
443 N FRANKLIN ST
STE 300
SYRACUSE, NY 13204-5423

REGULAR MAIL

IBEW LOCAL 840
58 CASTLE ST
PO BOX851
GENEVA, NY 14456-2621

**CERTIFIED MAIL
7009-2828-0004-2440-9731
RETURN RECEIPT REQUESTED**

May 30, 2013

JULIO GONZALEZ, Designated Agent of
NLRB

Date

Name

/S/JULIO GONZALEZ

Signature

FORM NLRB 4338
(6-90)

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
NOTICE

Case 03-CA-088127

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements *will not be granted* unless good and sufficient grounds are shown *and* the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds must be set forth in *detail*;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and
- (5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

JAMES COLACINO
NEWARK ELECTRICAL/COLACINO
INDUSTRIES
126 HARRISON ST
NEWARK, NY 14513-1233

EDWARD A. TREVVETT, ESQ.
HARRIS BEACH LLC
99 GARNSEY RD
PITTSFORD, NY 14534-4565

DONALD D. OLIVER, ESQ.
Blitman & King, LLP
443 N FRANKLIN ST
STE 300
SYRACUSE, NY 13204-5423

A-60

IBEW LOCAL 840
58 CASTLE ST
PO BOX851
GENEVA, NY 14456-2621

Form NLRB-4668
(4-05)

**SUMMARY OF STANDARD PROCEDURES IN FORMAL HEARINGS HELD
BEFORE THE NATIONAL LABOR RELATIONS BOARD
IN UNFAIR LABOR PRACTICE PROCEEDINGS PURSUANT TO
SECTION 10 OF THE NATIONAL LABOR RELATIONS ACT**

The hearing will be conducted by an administrative law judge of the National Labor Relations Board who will preside at the hearing as an independent, impartial finder of the facts and applicable law whose decision in due time will be served on the parties. The offices of the administrative law judges are located in Washington, DC; San Francisco, California; New York, N.Y.; and Atlanta, Georgia.

At the date, hour, and place for which the hearing is set, the administrative law judge, upon the joint request of the parties, will conduct a "prehearing" conference, prior to or shortly after the opening of the hearing, to ensure that the issues are sharp and clearcut; or the administrative law judge may independently conduct such a conference. The administrative law judge will preside at such conference, but may, if the occasion arises, permit the parties to engage in private discussions. The conference will not necessarily be recorded, but it may well be that the labors of the conference will be evinced in the ultimate record, for example, in the form of statements of position, stipulations, and concessions. Except under unusual circumstances, the administrative law judge conducting the prehearing conference will be the one who will conduct the hearing; and it is expected that the formal hearing will commence or be resumed immediately upon completion of the prehearing conference. No prejudice will result to any party unwilling to participate in or make stipulations or concessions during any prehearing conference.

(This is not to be construed as preventing the parties from meeting earlier for similar purposes. To the contrary, the parties are encouraged to meet prior to the time set for hearing in an effort to narrow the issues.)

Parties may be represented by an attorney or other representative and present evidence relevant to the issues. All parties appearing before this hearing who have or whose witnesses have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603, and who in order to participate in this hearing need appropriate auxiliary aids, as defined in 29 C.F.R. 100.603, should notify the Regional Director as soon as possible and request the necessary assistance.

An official reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the administrative law judge for approval.

All matter that is spoken in the hearing room while the hearing is in session will be recorded by the official reporter unless the administrative law judge specifically directs off-the-record discussion. In the event that any party wishes to make off-the-record statements, a request to go off the record should be directed to the administrative law judge and not to the official reporter.

Statements of reasons in support of motions and objections should be specific and concise. The administrative law judge will allow an automatic exception to all adverse rulings and, upon appropriate order, an objection and exception will be permitted to stand to an entire line of questioning.

All exhibits offered in evidence shall be in duplicate. Copies of exhibits should be supplied to the administrative law judge and other parties at the time the exhibits are offered in evidence. If a copy of any exhibit is not available at the time the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the administrative law judge before the close of hearing. In the event such copy is not submitted, and the filing has not been waived by the administrative law judge, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

Any party shall be entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. In the absence of a request, the administrative law judge may ask for oral argument if, at the close of the hearing, it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.

(OVER)

Form NLRB-4668
(4-05) Continued

In the discretion of the administrative law judge, any party may, on request made before the close of the hearing, file a brief or proposed findings and conclusions, or both, with the administrative law judge who will fix the time for such filing. Any such filing submitted shall be double-spaced on 8 1/2 by 11 inch paper.

Attention of the parties is called to the following requirements laid down in Section 102.42 of the Board's Rules and Regulations, with respect to the procedure to be followed before the proceeding is transferred to the Board: No request for an extension of time within which to submit briefs or proposed findings to the administrative law judge will be considered unless received by the Chief Administrative Law Judge in Washington, DC (or, in cases under the branch offices in San Francisco, California; New York, New York; and Atlanta, Georgia, the Associate Chief Administrative Law Judge) at least 3 days prior to the expiration of time fixed for the submission of such documents. Notice of request for such extension of time must be served simultaneously on all other parties, and proof of such service furnished to the Chief Administrative Law Judge or the Associate Chief Administrative Law Judge, as the case may be. A quicker response is assured if the moving party secures the positions of the other parties and includes such in the request. All briefs or proposed findings filed with the administrative law judge must be submitted in triplicate, and may be printed or otherwise legibly duplicated with service on the other parties.

In due course the administrative law judge will prepare and file with the Board a decision in this proceeding, and will cause a copy thereof to be served on each of the parties. Upon filing of this decision, the Board will enter an order transferring this case to itself, and will serve copies of that order, setting forth the date of such transfer, on all parties. At that point, the administrative law judge's official connection with the case will cease.

The procedure to be followed before the Board from that point forward, with respect to the filing of exceptions to the administrative law judge's decision, the submission of supporting briefs, requests for oral argument before the Board, and related matters, is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be served on the parties together with the order transferring the case to the Board.

Adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations. If adjustment appears possible, the administrative law judge may suggest discussions between the parties or, on request, will afford reasonable opportunity during the hearing for such discussions.

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION THREE**

**NEWARK ELECTRIC CORP.,
NEWARK ELECTRIC 2.0, INC.
AND COLACINO INDUSTRIES., INC.,
a single employer and/or alter egos**

and

Case 3-CA-088127

**INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 840**

SECOND AMENDED ANSWER TO COMPLAINT

Colacino Industries, Inc., (referred to herein as "Respondent"), by its attorneys, Harris Beach PLLC, for its Answer to the Complaint, states as follows:

1. Respondent admits the allegations contained in paragraphs I(a) and I(b) of the Complaint.
2. Respondent admits the allegations contained in paragraphs II(c), of the Complaint and denies the allegations in paragraphs II(a), II(b), and II(d) of the Complaint.
3. Respondent denies the allegations contained in paragraph III of the Complaint.
4. Respondent denies the allegations contained in paragraph IV of the Complaint.
5. Respondent admits the allegations contained in paragraph V of the Complaint.
6. With respect to the allegations contained in paragraph VI of the Complaint, Respondent states that the individuals listed below held, at material times, the title next to their name:

- (a) James Colacino – President and 100% owner of Colacino Industries
(Colacino);

(b) James Colacino – President and 100% owner of Newark Electric 2.0 (NE 2.0);

(c) Richard Colacino – President and 100% owner of Newark Electric Corporation (NEC);

that during such employment each was a supervisor and agent of the company listed in parentheses within the meaning of the Act, and otherwise denies the remaining allegations contained in this paragraph of the Complaint.

7. Respondent admits the allegations contained in paragraph VII of the Complaint.

8. Respondent denies knowledge and information sufficient to form a belief as to the truth or falsity of the allegations in paragraph VIII of the Complaint and therefore denies those allegations.

9. Respondent denies the allegations contained in paragraph IX of the Complaint.

10. Respondent admits the allegations contained in paragraph X of the Complaint.

11. Respondent denies the allegations contained in paragraph XI of the Complaint.

12. Respondent denies the allegations contained in paragraph XII of the Complaint.

13. Respondent denies the allegations contained in paragraph XIII of the Complaint.

14. Respondent denies the allegations contained in paragraph XIV of the Complaint.

15. Respondent denies every remaining allegation of the Complaint not heretofore admitted, denied or otherwise controverted.

FIRST AFFIRMATIVE DEFENSE

16. The Complaint must be dismissed as untimely.

SECOND AFFIRMATIVE DEFENSE

17. The Complaint must be dismissed on the basis that the Letter of Assent – C referenced in paragraph IX(a) of the Complaint was timely terminated by Newark Electric 2.0 in June 2012.

18. During their negotiations regarding the possibility of signing Colacino Industries to a Letter of Assent – C in place of Newark Electric 2.0 Mr. Colacino expressed concern to the Union regarding the status of the existing Letter of Assent – C with Newark Electric 2.0. (Note: at the time of these discussions in June/July 2011, Newark Electric 2.0 was still within the initial 180 day period when its Letter of Assent – C could not be terminated by Mr. Colacino.)

19. The Union's Business Agent, Mike Davis, promised Mr. Colacino that if Mr. Colacino were to sign Colacino Industries to a Letter of Assent – C with the Union, Mr. Davis would redate the Letter of Assent – C for Newark Electric 2.0 so that the two letters of assent would be effective on the same date and essentially run together, even though the plan was to have Newark Electric 2.0 become an empty shell (in fact the paperwork to dissolve Newark Electric 2.0 had already been filed with New York State).

20. Based *and conditioned on* Mr. Davis' guarantee that he would redate the Letter of Assent – C for Newark Electric 2.0 Mr. Colacino agreed to sign Colacino Industries to a Letter of Assent – C with the Union.

21. Mr. Colacino thereafter timely terminated the Colacino Letter of Assent – C on April 12, 2012, and the Newark Electric 2.0 Letter of Assent – C in June 2012.

THIRD AFFIRMATIVE DEFENSE

22. The Letter of Assent – C referenced in paragraph IX(a) of the Complaint is void based on the doctrine of fraud in the inducement.

FOURTH AFFIRMATIVE DEFENSE

23. The Letter of Assent - C referenced in paragraph IX(a) of the Complaint is void based on the doctrine of fraud in the execution.

FIFTH AFFIRMATIVE DEFENSE

24. The Complaint must be dismissed on the basis of the doctrine of unclean hands.

SIXTH AFFIRMATIVE DEFENSE

25. The Complaint must be dismissed on the basis of the doctrine of equitable estoppel.

SEVENTH AFFIRMATIVE DEFENSE

26. The Complaint must be dismissed on the basis of the doctrine of misrepresentation and detrimental reliance.

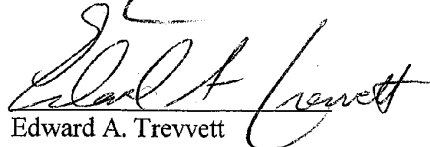
EIGHTH AFFIRMATIVE DEFENSE

27. The Complaint must be dismissed on the basis that the Acting General Counsel was not validly appointed under the Federal Vacancies Reform Act at the time this Complaint was issued, and therefore the Acting General Counsel lacked legal authority to either initiate legal action or delegate the authority to initiate legal action to the Regional Director. Accordingly the Complaint which was invalidly initiated on behalf of the Acting General Counsel must be dismissed as a matter of law.

WHEREFORE, Respondents request that the Complaint be dismissed and that Respondents have such other and further relief as the Administrative Law Judge and/or the National Labor Relations Board may deem appropriate.

Dated: August 23, 2013
Pittsford, New York

HARRIS BEACH PLLC



Edward A. Trevvett
Attorneys for Respondents
99 Garnsey Road
Pittsford, New York 14534
Telephone: (585) 419-8800
Facsimile: (585) 419-8817

TO:

Rhonda P. Ley
Regional Director
National Labor Relations Board, Region 3
Niagara Center Building
130 S. Elmwood Avenue, Suite 630
Buffalo, New York 14202-2387

Donald D. Oliver, Esq.
Counsel for International Brotherhood of Electrical Workers, Local 840
Blitman & King, LLP
443 N Franklin Street
Suite 300
Syracuse, New York 13204-5423

Claire T. Sellers, Esq.
Counsel for the Acting General Counsel
Via Facsimile (716) 551-4972

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION THREE

NEWARK ELECTRIC CORP.,
NEWARK ELECTRIC 2.0, INC.
AND COLACINO INDUSTRIES., INC.,
a single employer and/or alter egos

and

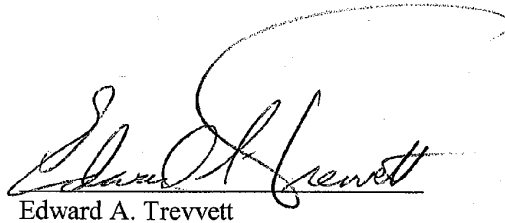
Case 3-CA-088127

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 840

CERTIFICATE OF SERVICE

I, EDWARD A. TREVVETT, one of the attorneys for Respondents, hereby certify that I caused a true and complete copy of the foregoing Answer to Complaint to be served, by causing same to be enclosed properly and securely in a sealed wrapper to be delivered via Federal Express on the 23rd day of August, 2013, from the office of Harris Beach PLLC to:

Donald D. Oliver, Esq.
Counsel for International Brotherhood of Electrical Workers, Local 840
Blitman & King, LLP
443 N Franklin Street
Suite 300
Syracuse, New York 13204-5423



Edward A. Trevvett

A-69

OFFICIAL REPORT OF PROCEEDINGS

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

In the Matter of: Case No. 3-CA-088127

NEWARK ELECTRIC, CORP.,
 NEWARK ELECTRIC 2.0, INC.,
 AND COLACINO INDUSTRIES, INC.,
 A single employer and/or
 ALTER EGO,

Respondent,
 and

FEDERATION OF ARMORED CAR WORKERS,

Charging Party.

Place: Buffalo, New York
 Dates: August 26, 2013
 Pages: 1 Through 156
 Volume: 1

OFFICIAL REPORTERS

BURKE COURT REPORTING, LLC
 1044 Route 23 North, Suite 316
 Wayne, NJ 07470
 (973) 692-0660

A P P E A R A N C E S

- 1 On Behalf of the General Counsel:
 2 CLAIKE T. SELLERS, ESQUIRE
 HARY ELIZABETH MATTHEW, ESQUIRE
 National Labor Relations Board Region 3
 Niagara Center Building, Suite 630
 130 South Elmwood Avenue
 Buffalo, New York 14202
 3
 4 On Behalf of the Respondent:
 5 EDWARD A. TREVETT, ESQ.
 6 HARRIS BEACH, PLLC
 7 99 GARNSEY ROAD
 8 PITTSFORD, NEW YORK 14534
 9 585 419-8643
 10 585 313-9322
 11
 12
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 14
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BURKE COURT REPORTING, LLC
 1044 Route 23 North, Suite 316
 Wayne, New Jersey 07470
 (973) 692-0660

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

In the Matter of:

NEWARK ELECTRIC CORP., NEWARK
 ELECTRIC 2.0, INC., and
 COLACINO INDUSTRIES, INC.,

Case No. 03-CA-088127

Employer,
 And

International Brotherhood of
 Electrical Workers
 Local 840

Respondent.

The above-entitled matter came on for trial pursuant to
 Notice, before KENNETH CHU, Administrative Law Judge, at the
 National Labor Relations Board, Niagara Center Building, Suite
 630, 130 South Elmwood Avenue, Buffalo, New York on Monday,
 August 26, 2013, at 10:00 a.m.

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I N D E X

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23
WITNESS	DIRECT	CROSS	REDIRECT	RECROSS	VOIR DIRE																	
Michael Davis	15	61	101	103	60																	
Anthony Blondell	105				128																	

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A-70

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<u>EXHIBITS</u>		
<u>EXHIBIT NUMBER</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>
<u>General Counsel's:</u>		
GC-1	19	98
GC-2 thru GC-5	20	28
GC-6	22	28
GC-7	23	28
GC-8	27	28
GC-9	28	28
GC-10	31	38
GC-11	35	38
GC-12	36	38
GC-13	41	43
GC-14	42	43
GC-15	42	43
GC-16	49	52
GC-17	52	52
GC-18	51	--
GC-19	57	60
GC-20	107	115
GC-21	108	115
GC-22	115	115
GC-23	117	120

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<u>Exhibits</u>		
<u>EXHIBIT NUMBER</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>
<u>General Counsel's:</u>		
(continued)		
GC-24	125	131
GC-25	126	131
<u>Respondent's:</u>		
R-1	12	12

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PROCEEDINGS

(Time Noted: 10:00 a.m.)

JUDGE CHU: On the record. This is August 26, 2013. My name is Kenneth Chu. I'm the presiding administrative law judge in this matter of Newark Electric Company, Corporation, I'm sorry, Newark Electric 2.0, Inc. and Colacino Industries, Inc., and International Brotherhood of Electrical Workers, Local 840, case number is 3-CA-088127.

Before we proceed any further, let me have the appearances of the parties for the record. And I'll start on my left, please state for the record your name.

MR. DAVIS: My name is Michael Davis. I'm representing the International Brotherhood of Electric Workers, Local 840.

JUDGE CHU: Thank you.

MS. SELLERS: Claire T. Sellers, counsel for the Acting General Counsel.

JUDGE CHU: Thank you. Go ahead.

MR. TREVETT: Edward H. Trevett, Harris Beach PLLC, attorney for the Respondent Colacino Industries.

JUDGE CHU: Sir.

MR. COLACINO: James Colacino, I'm the president of Colacino Industries.

JUDGE CHU: Thank you. The issue as I see it before me is what's in the complaint, allegedly the failure of the Respondent to adhere to respective bargaining agreement, and the

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termination of an employee for allegedly engaging in concerted activities. As I understand from Ms. Sellers there's an amended answer which will be reproduced and then submitted at a later time.

Are there any outstanding issues with subpoena or any other matters before we go any further?

MS. SELLERS: There are no subpoena issues. I just ask that Your Honor take official notice of a prior decision. It's a 2006 WL 2737 247 involving the same Respondent Colacino Industries in an adverse credibility finding against the same company.

JUDGE CHU: Well, I'll take a look at the decision but, you know, any adverse inference finding may not be relevant in this proceeding but I'll take a look at that decision.

MS. SELLERS: I understand.

JUDGE CHU: Are there any stipulations that the parties had agreed upon?

MS. SELLERS: We've agreed, and correct me if I misstate, to stipulate that two of the companies alleged in complaint, Colacino Industries and Newark Electric, Colacino Industries, Incorporated and Newark Electric 2.0 are a single Employer alter ego for the purposes of this hearing only.

MR. TREVETT: That is correct, Your Honor.

MS. SELLERS: And Respondent also agreed we've stipulated that the Board under the Act has jurisdiction under, has

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1 jurisdiction over Colacino Industries, Incorporated.
 2 MR. TREVETT: Judge, again subject to my 8 affirmative
 3 defense and a motion to be made on that, the jurisdiction goes
 4 to the 50 thousand dollar amount so --
 5 MS. SELLERS: Yes.
 6 MR. TREVETT: -- that's, that's the extent of the
 7 stipulation, Judge.
 8 JUDGE CHU: And that's only Colacino?
 9 MR. TREVETT: Correct, Judge.
 10 JUDGE CHU: Any other stips? Not at this time right?
 11 MS. SELLERS: None.
 12 JUDGE CHU: Thank you. Since there are no other
 13 preliminary matters let's proceed with the trial. Does the
 14 Acting General Counsel have an opening statement?
 15 MS. SELLERS: Yes, I do.
 16 JUDGE CHU: Go ahead.
 17 MS. SELLERS: Your Honor, this case is about three
 18 companies, Newark Electric, Newark Electric 2.0, and Colacino
 19 Industries, that are single Employer alter ego. The evidence
 20 shows Respondent repudiated Section 8(f), and Section 8(5)
 21 agreement for Newark Electric, followed by Colacino Industries
 22 signed letters of assent about five months apart finding
 23 themselves to same master collective bargaining agreement, and
 24 then Respondent only timely terminated its assent with respect
 25 to Colacino Industries.

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1 to terminate the agreement. It did so successfully.
 2 Five, because Newark Electric and Colacino Industries are
 3 a single Employer or alter ego under the Act, Colacino
 4 Industries is still bound to the terms of the collective
 5 bargaining relationship between Newark Electric and Local 840.
 6 And six, when the representative of these companies, Jim
 7 Colacino, decided to shirk his collective bargaining
 8 responsibilities he laid off Anthony Blondell under false
 9 pretenses because he knew Blondell would not forfeit his Union
 10 membership.
 11 Now, Respondent will try to muddy the waters in this case
 12 by saying that Newark Electric is all but a defunct company.
 13 However, the evidence will show that Newark Electric is alive
 14 and well as the face of Colacino Industries. Respondent may
 15 also argue that the letter of assent as signed on February 2011
 16 was an agreement between Newark Electric 2.0 and the Union, but
 17 the document speaks otherwise.
 18 Finally, Respondent may testify they had an agreement with
 19 the Union to redact the original letter of assent between Newark
 20 Electric and the Union, but General Counsel will show there is
 21 no evidence of any such agreement. The evidence speaks for
 22 itself. Newark Electric is still bound to its collective
 23 bargaining relationship that Local 840 and as a single Employer
 24 alter ego Colacino Industries and Newark Electric 2.0 are bound
 25 to. Thank you.

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1 Newark Electric, Newark Electric 2.0 and Colacino
 2 Industries are one company, a single Employer. And under the
 3 Act when one entity of a single Employer alter ego is member to
 4 a collective bargaining agreement all the entities of that
 5 single Employer alter ego are members of the CGAA. Thus, it
 6 does not matter that Colacino Industries timely terminated its
 7 assent.
 8 In only matters that Newark Electric is still bound to the
 9 letter of assent with MEBA, the multi-Employer bargaining
 10 association and Local 840, and as such so is Newark Electric 2.0
 11 and Colacino Industries. So, all may not appear over the next
 12 few days that this case is simple, it is the, the facts of this
 13 case are.
 14 One, Newark Electric by its representative, Jim Colacino,
 15 signed a letter of assent thereby forming a collective
 16 bargaining relationship with Local 840 on February 24, 2011.
 17 Two, Newark Electric had from August 24, 2011 until
 18 January 24, 2012 to provide Local 840 and MEBA, the multi-
 19 employer bargaining association, with notice that it wished to
 20 terminate the agreement. It did not do that.
 21 Three, Colacino Industries signed a letter of assent
 22 thereby forming a collective bargaining relationship with Local
 23 840 on July 20, 2011.
 24 Four, Colacino Industries had from January 20, 2012 until
 25 June 20, 2012 to provide Local 840 and MEBA with notice it was

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1 JUDGE CHU: Thank you. Mr. Trevett, do you have an
 2 opening statement for the Respondent?
 3 MR. TREVETT: I do, Judge. Prior to I also have a motion
 4 to dismiss that I would like to present.
 5 JUDGE CHU: Go ahead.
 6 MR. TREVETT: Thank you, Judge. The Respondent is moving
 7 to dismiss the complaint in its entirety. The basis for the
 8 motion is that the acting General Counsel was not validly
 9 appointed under the Federal Vacancies Reform Act or any other
 10 act. Since the acting General Counsel was not validly appointed
 11 the acting General Counsel lacked the legal authority to either
 12 initiate a legal action or delegate that authority to the
 13 regional director in this case.
 14 Accordingly we believe as a matter of law there is not a
 15 veil of legal complaint before you and request that you dismiss
 16 the case. In support of the motion I would refer you to a very
 17 recent cast on this point that I, if I may hand it to you,
 18 Judge?
 19 JUDGE CHU: I think I'm aware of that case. Do you want
 20 to submit that as an exhibit?
 21 MR. TREVETT: If you're aware of it and would take
 22 judicial notice of it I don't need to submit. They have a copy
 23 of it. Let me do that.
 24 JUDGE CHU: I'll make it as part of the record.
 25 MR. TREVETT: I'm giving one to General Counsel.

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1 JUDGE CHU: Let's mark that as Respondent Exhibit One.
 2 (Respondent Exhibit One identified and received)
 3 JUDGE CHU: Anything else on the motion?
 4 MR. TREVETT: Nothing on that motion.
 5 JUDGE CHU: All right. I'll reserve judgment on the
 6 motion to dismiss and we'll proceed with this proceeding at this
 7 time. And if there is a ruling on the jurisdictional dismissal
 8 motion I'll make that part of my decision.
 9 MR. TREVETT: Okay, Judge.
 10 JUDGE CHU: All right.
 11 MR. TREVETT: May I proceed with my opening?
 12 JUDGE CHU: Go ahead.
 13 MR. TREVETT: Thank you. I think General Counsel and
 14 yourself, Judge, had hit really on a couple of issues that need
 15 to be decided in this case, does the Colacino Industries have
 16 any legal obligations to the IBEW Local 840 by virtue of letter
 17 of assent that were signed between, that were entered into. And
 18 the other issue is did Colacino violate the act by laying off
 19 Anthony Blondell on July 20th of 2012.
 20 I think the, well we're going to have evidence, we'll
 21 have, hearing evidence about Mr. Davis who is the business agent
 22 for Local 840, his efforts to sign Colacino Industries, and
 23 you'll hear that history. You'll hear history that Mr. Colacino
 24 himself actually created a corporation, Newark Electric 2.0, in
 25 order to enter into a relationship with Local 840 under this

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1 Colacino Industries itself signing onto the letter of assent.
 2 And you'll see, you'll hear evidence that the letter of
 3 assent between Colacino Industries was in fact validly
 4 terminated. And the whole issue quite frankly is a
 5 representation by Mr. Davis that at the time Mr. Colacino
 6 entered into the second letter of assent with his company
 7 Colacino Industries Mr. Davis said he had re-dated the first one
 8 that went to Newark Electric, so they both ran from the same
 9 date for business purposes, that date being July 20, 2011.
 10 And the whole theory is from our perspective, Judge, is if
 11 that's true then in fact Mr. Colacino legitimately opted out of
 12 both letters of assent, both for his own company Colacino
 13 Industries, and the other company Newark Electric 2.0.
 14 With respect to Mr. Blondell the evidence is going to
 15 show, and we'll have witnesses to testify that there was no
 16 discriminatory termination here. In fact, Mr. Blondell had
 17 asked for, asked to be laid off for reasons of his own. And,
 18 and further we will hear evidence that actually a few weeks
 19 before that layoff he had actually been validly terminated but
 20 then brought back to work after that termination.
 21 So, you're not going to have any evidence of motive
 22 because quite frankly if Mr. Colacino had wanted to get rid of
 23 Mr. Blondell he had a perfect reason for doing so. He did
 24 terminate him for misconduct but then after meeting with Mr.
 25 Blondell and Mr. Davis elected to reinstate him to his

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1 letter of assent.
 2 And you'll see a copy of the letter of assent at some
 3 point as an exhibit. Basically it has three paragraphs. It
 4 says, your first paragraph says, numbered paragraph says you
 5 can't get out for the first 180 days. There was a six month
 6 trial period. Second paragraph provides for termination if the
 7 Employer does not agree to continue the relationship.
 8 And the third paragraph similarly has a provision for
 9 discontinuing a relationship after a one year period at the end
 10 of whatever the current MECA agreement is.
 11 You're going to hear evidence that Newark Electric 2.0 was
 12 the entity that, well, there are three entities, Judge. Newark
 13 Electric Corporation is basically, it still is tentatively in
 14 existence but it hasn't done business in over 10 years. And
 15 it's not owned by my client. He has no ownership interest. He
 16 has no, any kind of authority to bind anything.
 17 And so that first letter of assent that you see, Newark
 18 Electric really should have been Newark Electric 2.0. Newark
 19 Electric Corporation has never had anything to do with its
 20 relationship. So, you'll see Newark Electric 2.0 entering the
 21 relationship on February of 2011, tried it for a couple of
 22 months, was not working out for business reasons.
 23 And you'll hear evidence that Mr. Colacino and Mr. Davis
 24 basically talked about stopping that relationship and start
 25 bargaining employees back over to Colacino Industries and

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1 employment up until the point that Mr. Blondell asked to be laid
 2 off. So, we think that's what the evidence is going to show.
 3 Thank you for your time.
 4 JUDGE CHU: Thank you, counsel. Are you ready to proceed
 5 with the first witness?
 6 MS. SELLERS: Yes.
 7 JUDGE CHU: Come on up to the seat, please. Before you
 8 sit down raise your right hand.
 9 Whereupon,
 10 **MICHAEL L. DAVIS**
 11 Having been first duly sworn, was called as a witness and
 12 testified as follows:
 13 JUDGE CHU: Have a seat. Again, state for the record your
 14 full name.
 15 THE WITNESS: Michael L. Davis.
 16 JUDGE CHU: Thank you. Ms. Sellers, your witness.
 17 **DIRECT EXAMINATION**
 18 BY MS. SELLERS:
 19 Q Mr. Davis, what is your current employment?
 20 A International Brotherhood of Electric Workers Local 840,
 21 Geneva, New York.
 22 Q And what is your position?
 23 A I'm the business manager.
 24 Q And how long have you held that position?
 25 A Since July of 2011.

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1 Q And as business manager what are your duties?

2 A To gain work, enforce the collective bargaining agreement,

3 actually I'm the financial secretary and also oversee the funds

4 of the local Union.

5 Q And did you hold any position with Local 840 before you

6 were the business manager?

7 A Yes, I was the organizer/membership development.

8 Q And what years were you an organizer?

9 A From May of 2005 to July of 2011.

10 Q And as an organizer what were your duties?

11 A To increase membership and try and convert Union non-

12 contractors to Union contractors.

13 MS. SELLERS: Can we go off the record for a minute?

14 JUDGE CHU: Off the record, please.

15 (Whereupon, a brief recess was taken)

16 JUDGE CHU: Back on the record after the acting General

17 Counsel went through her exhibits. There's a motion or request

18 by the respondent counsel for a sequestration order. There's no

19 opposition to that.

20 And I don't have a problem with that, so. The

21 sequestration order means that we're going to request that you

22 step out and do not discuss your knowledge of this case with

23 anybody in this proceeding or any other participants in this

24 proceeding, or members or the employee or the Union, basically

25 don't discuss your testimony or your knowledge of this matter.

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18

1 summarizing for us what a work, that work preservation class

2 says?

3 A There's a lot of verbiage that comes out to a contractor

4 cannot subcontract to another entity in the Union contractor.

5 Q Okay, thank you. Now, how does an Employer come to be a

6 party to this collective bargaining agreement?

7 A They sign a letter of assent. It's generally two

8 different letters of assent that are used, letter of Assent A,

9 and a letter of assent C. Letter of Assent A is someone who has

10 been a Union contractor prior, understands the collective

11 bargaining agreement and has no problem with it.

12 A letter of Assent C is one that's set forth for somebody

13 who has not been a Union contractor prior and wishes to try our

14 collective bargaining agreement out and see how it works for

15 them.

16 JUDGE CHU: So, the only difference with a letter of

17 assent C is the, about privilege?

18 THE WITNESS: Yes.

19 JUDGE CHU: And that's usually with your Employers?

20 THE WITNESS: Yes, it's with Employers.

21 JUDGE CHU: Well, not new employees but employees that are

22 doing --

23 THE WITNESS: They've never been in the collective

24 bargaining. It gives them the ability to at least a six month

25 time period where they're sure they're going to be in so they

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1 Ms. Sellers, there's a place for him. All right, let's

2 resume examination, please.

3 BY MS. SELLERS:

4 Q Mr. Davis, who does Local 840 represent?

5 A Electricians, and the five counties there, Ontario,

6 Seneca, Yates, Cayuga, and Oneida, parts thereof not whole

7 towns but parts thereof.

8 Q And does Local 840 have a collective bargaining agreement

9 with Employers or multiemployer association?

10 A Yeah, a multiemployer association is MEBA, a federal

11 regulation chapter 8.

12 Q I show you what is marked as GC-1, do you recognize this

13 document?

14 A Yeah, that's our inside construction agreement which was

15 in January 2011 and May 31, 2012.

16 Q And that's going to constitute Exhibit Two, do you

17 recognize that document?

18 A Yes, that's our current inside construction agreement but

19 not to be done until May 31, 2015.

20 Q Thank you. Would you mind looking in the most recent,

21 it's identical, but in the most recent agreement in section

22 2.06, and there's what is listed as the work preservation

23 paragraph?

24 A Yes.

25 Q And it actually makes up three paragraphs, would you mind

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1 can see what, what operating as a Union contractor would be

2 like. And then they have, what, a five month window where they

3 can get out, and then it converts to a letter of assent A if

4 they're not.

5 BY MS. SELLERS:

6 Q I'm pretty sure you just answered my question. So, how do

7 you get --

8 JUDGE CHU: I'm sorry.

9 BY MS. SELLERS:

10 Q -- I'm referring you to General Counsel Exhibit Three.

11 JUDGE CHU: Yes, you marked it already but General Counsel

12 Exhibit One is usually the complaint and the answer and the

13 amended answer.

14 (General Counsel Exhibit One identified)

15 MR. TRIVETT: Could we, I would agree it that just we

16 mark these two through five and leave one vacant for that when

17 that comes up, if that will make life easier.

18 JUDGE CHU: So, yes, we need to just remark everything.

19 Are you going to introduce GC-1, which is the complaint and the

20 amended answer, during a recess or something, right?

21 MS. SELLERS: Yes.

22 JUDGE CHU: Okay. So, why don't we remark the CBA January

23 1, 2011 through May 31, 2012 as GC Exhibit Two.

24 MS. SELLERS: Okay.

25 JUDGE CHU: And then accordingly, the second CRA as Three,

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1 the letter of Assent A as four, and letter of Assent C is Five,
2 okay.
3 **General Counsel Exhibits Two through Five identified)**
4 MS. SELLERS: Yes, thank you, I'm sorry about that.
5 JUDGE CHU: All right, please continue.
6 BY MS. SELLERS:
7 Q I've handed to you what is now marked as General Counsel
8 Exhibit Four and Five, the letter of Assent A and letter of
9 Assent C.
10 A Yes.
11 Q And you went into this somewhat how do you get out, how
12 does one cancel their relationship under the letter of Assent A,
13 how does an Employer do that?
14 A They have to, it says right in there the local Union
15 notify them 150 days prior to the end of the current anniversary
16 date.
17 Q And if we turn to the letter of Assent C how, what, how
18 may an Employer terminate a letter of Assent C?
19 A That he has to, he has to do the, stay in for six months
20 and then after that six months he would have to give one month
21 notice prior to terminating any agreement.
22 Q And up until the --
23 A Up until one year's time. He's bound to same as a letter
24 of assent he would be.
25 JUDGE CHU: I'm sorry, what happened after one gets bound?

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1 assent signed?
2 A Yes.
3 Q What type of letter of assent?
4 A A letter of Assent C.
5 Q And what company did Jim Colacino, James Colacino agree to
6 sign a letter of Assent C for?
7 A Newark Electric.
8 Q Do you recognize this document?
9 A Yes, it's a letter of Assent C.
10 (General Counsel's GC-6 identified)
11 Q For what company?
12 A For Local 840.
13 Q Now, there seems to be blanks that were filled in with
14 typed information, who filled those in?
15 A Our secretary, Phyllis, filled them in.
16 Q And how did your secretary know to fill them in?
17 A I got the information from Vicky Bliss from Newark
18 Electric.
19 Q And who is, Vicky Bliss is who at Newark Electric, what's
20 her position?
21 A I think she's the receptionist/bookkeeper.
22 Q So, where it says name of firm Newark Electric and Federal
23 Employer identification number 15-112782, that was information
24 you got from Vicky Bliss at Newark Electric.
25 A That's correct.

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1 THE WITNESS: That he did, he becomes bound. It's exactly
2 the same as the letter of Assent A, and then they have to wait
3 and do the 150 days notice.
4 JUDGE CHU: Thank you.
5 BY MS. SELLERS:
6 Q Do you know Richard Colacino?
7 A Yes.
8 Q How do you know him?
9 A Through my visits to Newark Electric.
10 Q And you know James Colacino?
11 A Yes.
12 Q And how do you know him?
13 A Through my visits at Newark Electric.
14 Q Did there come a time when you were trying to sign a
15 letter of assent with Newark Electric?
16 A Yes.
17 Q And who were you dealing with during that time?
18 A I dealt with Jim.
19 Q Jim Colacino.
20 A Jim Colacino.
21 Q And when was that time period that you're trying to get a
22 letter of assent signed?
23 A Oh, I started in 2006 and it went, and it actually took
24 place in February 2011.
25 Q And so, February 2011, you were able to get a letter of

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1 Q Now, it appears on here that Mr. Colacino as an James
2 Colacino signed for Newark Electric as CEO.
3 A Yes.
4 Q Do you know why he signed as opposed to his father Richard
5 Colacino?
6 A In all my dealings he acted as the CEO president. And I
7 actually from when we exchanged cards that's what it said on the
8 card.
9 Q You mean business card?
10 A Yes.
11 JUDGE CHU: Were you involved in this negotiation and
12 signing this document?
13 THE WITNESS: I was involved in the signing, yes. We had
14 a, it was actually in the evening.
15 JUDGE CHU: And who is the business manager that's noted
16 on the signature?
17 THE WITNESS: At that time it was our business manager who
18 was Clark Culver.
19 JUDGE CHU: What was your position?
20 THE WITNESS: I was the organizer. I was the organizer at
21 that time.
22 JUDGE CHU: Thank you. Continue, please.
23 BY MS. SELLERS:
24 Q This is General Counsel's Exhibit Seven.
25 (General Counsel Exhibit Seven identified)

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1 Q Is this the business card you're referring to?

2 A Yes.

3 Q And is this the business card that Mr. James Colacino gave

4 you in your dealings prior to signing the letter of Assent C for

5 Newark Electric?

6 A Yes.

7 Q Was Richard Colacino present at the signing?

8 A Yes, he was.

9 Q Who else was present?

10 A Richard Colacino was present. A gentleman named Tony and

11 I don't know Tony's last name. I always just called him Tony.

12 James, myself, Clark Culver and Frank Muia was there and a state

13 organizer rep for the IBEW.

14 Q And --

15 A Oh, excuse me which one did I repeat? Frank Muia. Muia,

16 M-U-I-A, he's our state organizing representative.

17 Q And where did the signing of this letter of Assent take

18 place?

19 A Conference room in Newark Electric.

20 Q And when was this again?

21 A This was in the evening. We all met after hours.

22 Q How do you remember this?

23 A I remember it because we were trying to see if we could

24 sign a letter of Assent A in June, decided he wanted to do a C

25 and we went outside. They went outside and got that and there

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1 A Yes, they were.

2 Q Were they members of a Union?

3 A No, they were not.

4 Q Were any agreements made between a Union and Mr. Colacino

5 regarding Mr. Patterson and Mr. Bebernitz?

6 A Yeah, the agreement was that with all contractors that we

7 would sign is that they finish the work that they had already

8 started under their current pay rate so as not to cause the

9 company any harm, because it does change their pay rates with

10 the health care and things.

11 Q And would they, would those members eventually become

12 members of the Union?

13 A Yes. Yes, they would, they've got a thousand, thousand

14 hour probationary period that they have to do, and then they

15 would eventually, and then they become members, correct.

16 Q And is that the standard?

17 A That's standard procedure.

18 Q Did Mr. Colacino make any request as part of signing the

19 letter of Assent C?

20 A He wished to have Tony Blondell as an employee.

21 Q Did Mr. Blondell go to work for Mr. Colacino?

22 A Yes, he did.

23 Q And did Newark Electric begin to make contributions as is

24 required under the contract?

25 A Yes, they did.

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1 was six copies we had to sign, so he signed off six copies. And

2 afterwards we were all actually pretty excited about the idea

3 and went out to dinner afterwards.

4 Q Now, looking back at that document, General Counsel

5 Exhibit Six, I already had you explain, but there's a stamp on

6 it. Was that stamp there at the time these documents were

7 signed?

8 A No, there was not.

9 Q Okay. And how does that stamp that came to be on the

10 document?

11 A It's procedure after a contractor is signed to a letter of

12 Assent and they are mailed to our international, all six copies,

13 and they approve them, that's your approval stamp.

14 Q And then would a copy have been provided to Mr. Colacino?

15 A I'm not sure what happens after that.

16 Q Okay. Now, the time that this letter of Assent C was

17 signed were there employees working at Newark Electric?

18 A There were employees working.

19 Q Do you recall how many or who the employees were that were

20 working at Newark Electric?

21 A All I know that Mike Bebernitz was there. Mark Patterson

22 (ph) was there. And those were the two main electricians that

23 they had at that time.

24 Q And were they performing what would now be considered

25 bargaining unit work?

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1 Q Did anyone else in Newark Electric?

2 A Several different occasions we had produced manpower for

3 Newark Electric, yeah.

4 Q I've just handed you what's marked General Counsel Exhibit

5 8. Can you identify these?

6 (General Counsel Exhibit 8 identified)

7 A Yes, these are referral termination notices that are sent

8 out to employees. And they're sent out so the, and send back to

9 us whether or not the employees need more training or whether or

10 not they're eligible for rehire. It's also used in cases for

11 unemployment so they know that they're not employed anymore.

12 This is our basic referral termination notice so we know

13 whether or not they, what, what needs to be done with that

14 employee. It's Joseph Chomsky, Scott Barra were 2011 and 2012,

15 and I remember Roger Mahoney (ph), Leslie Barnett (ph), and Ray

16 Wiggins (ph), they were out, sent out for a bigger up over at

17 what used to be Sara Coventry, so.

18 Q Did you receive any complaints from Respondent about any

19 of these employees?

20 A None.

21 Q Did you receive contributions from the Employer for each

22 of these employees?

23 A Yes, we did. I need to speak up?

24 Q Do you recognize what's been marked as General Counsel

25 Exhibit 9?

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1 (General Counsel Exhibit 9 identified)
2 A That appears to be the payroll reports for Newark
3 Electric. This is what generates, sent back to our office that
4 shows breakdown of payment for benefits.
5 Q Who do you receive that from?
6 A We receive that from Newark Electric.
7 Q Okay.
8 A From my, all our contractors actually.
9 Q But this one is from Newark Electric.
10 A Correct.
11 Q Okay. I'd like to turn your attention to July 2011.
12 JUDGE CHU: Are you finished with the exhibits?
13 MS. SELLERS: Yes.
14 JUDGE CHU: Do you want to move them?
15 MS. SELLERS: Oh, yes, thank you. I'd like to move
16 General Counsel's Exhibits 2 through 9 into evidence.
17 JUDGE CHU: Do you have any objection to the documents?
18 MR. TREVETT: Can I have just a minute to look at a
19 couple of them?
20 JUDGE CHU: Yes.
21 MR. TREVETT: Thank you. Your Honor, no objection to the
22 admission of these exhibits General Counsel Two through Nine.
23 JUDGE CHU: All right, as marked I admit is as part of the
24 record.
25 (General Counsel Exhibits 2 thru 9 received)

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1 JUDGE CHU: Okay, let's continue.
2 BY MS. SELLERS:
3 Q So, July 2011, can you tell me what happened there?
4 A Yeah, during one of my visits to Newark, because I like to
5 keep track of what was going on there, Jim approached me about
6 signing Colacino Industries.
7 Q And what was Colacino Industries?
8 A It is another company that is in the same sport and he's
9 part, Jim's the president. He owns that company also.
10 JUDGE CHU: And when you say Jim, who do you mean?
11 THE WITNESS: Mr. Colacino, Jim Colacino.
12 BY MS. SELLERS:
13 Q And when Mr. Colacino approached you did he explain why he
14 wanted to sign a letter of Assent for Colacino Industries?
15 A At that time the way I understood it, it was, it was an
16 accounting function. It was getting hard for him then
17 accountant to keep track of the two different companies, with
18 two different sets of people, and he wanted to put them all in
19 one spot.
20 Q And how did you respond to Mr. Colacino's request?
21 A I actually told him that I didn't have a problem with it,
22 but I had to check with our international just to make sure
23 because there's some standard procedure not to get involved with
24 another letter of Assent C, so.
25 Q So, would you have agreed to sign Colacino Industries

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1 under Letter of Assent A?
2 A Yes, absolutely.
3 Q But you checked with, but Mr. Colacino --
4 A Well --
5 Q -- requested a letter of Assent C?
6 A Correct.
7 Q Did the international a letter of Assent C?
8 A Yes, they did.
9 JUDGE CHU: Now at that time Colacino Industries never
10 signed off on a letter of Assent onto your being approached in
11 July 2011, right?
12 THE WITNESS: No.
13 BY MS. SELLERS:
14 Q Can you --
15 A Oh, no, sorry.
16 JUDGE CHU: Was this the first time that Mr. Colacino
17 approached you about signing a letter of consent, or a letter of
18 Assent for Colacino?
19 THE WITNESS: Yes, that was the first time.
20 JUDGE CHU: Thank you. Continue, please.
21 BY MS. SELLERS:
22 Q Did the international approve of Mr. Colacino signing a
23 letter of Assent C for Colacino Industries?
24 A Yes, they did.
25 Q And did Mr. Colacino ultimately sign a letter of Assent C

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1 for Colacino Industries?
2 A Yes, he did.
3 Q Do you recognize what has been marked as General Counsel
4 Exhibit 10?
5 A Yes.
6 (General Counsel Exhibit 10 identified)
7 Q And what is it?
8 A The letter of Assent C for Colacino Industries.
9 Q And what's the line?
10 A It was signed on July 20, 2011.
11 Q Again there seem to be some blanks that were typed,
12 answers were typed in, who filled those in?
13 A My secretary filled those, those in.
14 Q And how did she know what to put in for name of firm and
15 federal Employer identification number?
16 A I called and asked the office of Newark Electric.
17 Q And now looking at this document or on that date July 20,
18 2011, where were you when this document was signed?
19 A Jim's office, Jim Colacino's office.
20 Q And who signed the document?
21 A Myself and Jim.
22 Q And who else was present?
23 A Nobody.
24 Q And when was, what time of day was this when this was
25 signed?

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1 A This is just regular course of business, business hours.
 2 JUDGE CHU: Can you just restate for the record the
 3 rationale of the explanation that you received from Mr. Colacino
 4 for signing off on the letter of Assent C?
 5 THE WITNESS: Yeah, it was strictly an accounting
 6 function. He, he wanted to bring everybody into one company to
 7 be paid through -- I guess the bookkeeping with two different
 8 companies was becoming rather arduous for the then bookkeeper.
 9 JUDGE CHU: And what were the two companies as you
 10 understood it?
 11 THE WITNESS: As I understood it Newark Electric and
 12 Colacino Industries.
 13 JUDGE CHU: And what would be, what would happen with the
 14 letter of Assent of Newark Electric?
 15 THE WITNESS: Nothing, it was still in effect. It's not
 16 unheard of in our industry to have, a company to have two
 17 different companies and two different entities. The only thing
 18 that's not allowed is you're not allowed because of our
 19 subcontracting clause to subcontract it. So, it would be so he
 20 could subcontract it that, too, to himself.
 21 JUDGE CHU: And at that time when you signed it, or when
 22 you approached a signing of a letter of Assent C with Colacino
 23 Industries were there ever any mention about Newark Electric
 24 2.0?
 25 THE WITNESS: I never knew Newark Electric 2.0 existed.

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1 A No.
 2 Q Did you have, did you agree to redate the letter of Assent
 3 for Newark Electric's July 20, 2011?
 4 A No.
 5 Q Did you agree that the letter of Assent for Colacino
 6 Industries would supercede the letter of Assent?
 7 A No.
 8 Q Did you agree that the letter of Assent for Newark
 9 Electric would now be null and void?
 10 A No.
 11 Q So, when was your -- well, you already answered that
 12 question. Did you ever come to refer employees to Colacino
 13 Industries?
 14 A I believe so, yeah, in one of those letters there was
 15 through that.
 16 Q As far as you're aware were there any changes to
 17 contributions made by Newark Electric?
 18 A Nope.
 19 Q Prior to Colacino, Mr. Colacino signing the letter of
 20 Assent for Colacino Industries could Newark Electric have
 21 subcontracted work to Colacino Industries?
 22 A No.
 23 Q Why not?
 24 A Because of our present work preservation clause.
 25 Q So, now that both companies had signed letters of Assent

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1 JUDGE CHU: Thank you, continue.
 2 BY MS. SELLERS:
 3 Q And again this stamp on this document how did that come to
 4 be there?
 5 A That was put on there by our international, again, same
 6 thing six copies would have to be signed, six copies have to put
 7 a stamp on.
 8 Q When you signed a letter of Assent for Newark Electric,
 9 you and Mr. Colacino made side agreements with regard to Mr.
 10 Patterson, Mr. Rebernitz' employment as well as Mr. Blondell --
 11 A No.
 12 Q -- were there any similar side agreements made with a
 13 letter of Assent for Colacino Industries to sign?
 14 A No.
 15 Q When you signed the letter of Assent for Colacino
 16 Industries were you aware of any employees working for Colacino
 17 Industries?
 18 A The same ones that I mentioned, Tony, Mark Patterson, and
 19 Mike Bebernitz.
 20 Q Did you have any agreement about what would happen to
 21 employees working for Newark Electric?
 22 A Just the previous, if they had a thousand hours then they
 23 would become Union members, that's --
 24 Q Did you have any agreement at what would happen to a
 25 letter of Assent for Newark Electric?

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1 could the subcontractor work for each other?
 2 A Yes.
 3 Q Did you to receive fund contributions for Colacino
 4 Industries?
 5 A Yes.
 6 Q After the --
 7 A Yes.
 8 MR. TREVETT: I'm sorry, what was the question?
 9 MS. SELLERS: Did you start to receive fund contributions
 10 for Colacino Industries.
 11 BY MS. SELLERS:
 12 Q Do you recognize what's been marked as General Counsel
 13 Exhibit 11?
 14 A Yes.
 15 (General Counsel Exhibit 11 identified)
 16 BY MS. SELLERS:
 17 Q What is it?
 18 A More monthly payroll for Colacino Industries to IBEW Local
 19 840 that shows what they paid into the funds per each person
 20 that had been, went to work there.
 21 Q Did Respondent attempt to terminate its relationship with
 22 the Union?
 23 MR. TREVETT: Objection, there's three Respondents, which
 24 one are we talking about?
 25 JUDGE CHU: Identify the name.

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1 BY MS. SELLERS:
 2 Q Did there come a time when Colacino Industries attempted
 3 to terminate its relationship with the Union?
 4 A Yes.
 5 Q How were you notified?
 6 A By letter.
 7 Q When was that?
 8 A April.
 9 Q April of?
 10 A April of 2011, I think it was April 12th.
 11 Q Was it 2011 or 2012?
 12 A Excuse me, 2012.
 13 Q Do you recognize General Counsel Exhibit 12?
 14 A Yes.
 15 (General Counsel Exhibit 12 identified)
 16 BY MS. SELLERS:
 17 Q What is it?
 18 A That's a letter received from Jim Colacino stating that
 19 the notification to Colacino Industries would be terminating the
 20 letter of Assent July 28, 2011.
 21 Q And did it come like this in this packet, two letters and
 22 the letter of Assent?
 23 A Yes.
 24 Q Now, the last sentence of the first letter indicates that
 25 Mr. Colacino wanted to meet with you about NEC 2.0, Inc., what

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1 Is NEC 2.0, Inc.?
 2 A At that point in time I had no idea what was 2.0.
 3 Q Do you have a guess today?
 4 A Yeah.
 5 MR. TREVETT: Objection.
 6 MS. SELLERS: Okay.
 7 MR. TREVETT: Speculation.
 8 BY MS. SELLERS:
 9 Q Now, did you attempt to contact Mr. Colacino to set up a
 10 meeting as the letter indicates?
 11 A Yes, I did.
 12 Q And what happened?
 13 A I contacted numerous occasions and never ended up getting
 14 a response. I think at one point in time we set up a meeting
 15 but I couldn't make that one meeting, and that was it, but other
 16 than that numerous occasions.
 17 Q Who did you talk to in order to setup that meeting?
 18 A With Vicky Bliss.
 19 Q Did you ever talk to Mr. Colacino directly?
 20 A No, I did not.
 21 Q Did you continue to receive contributions after May 26,
 22 2012, the termination date by Mr. Colacino?
 23 A Yes, we did.
 24 Q Did the Union employees continue to work for Mr. Colacino
 25 after May 26, 2012?

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1 A Yes, they did.
 2 Q I'd like to turn your attention to --
 3 MS. SELLERS: May I offer into evidence General Counsel's
 4 Exhibits 10, and 11, and 12?
 5 MR. TREVETT: No objection.
 6 JUDGE CHU: Thank you. Offered and admitted into the
 7 record.
 8 (General Counsel Exhibits 10, 11, 12 received)
 9 BY MS. SELLERS:
 10 Q I'd like to turn your attention to the events on June 29,
 11 2012, what happened that day in the morning?
 12 A In the morning.
 13 JUDGE CHU: What was the question?
 14 MS. SELLERS: Yes, there's a fan right over.
 15 BY MS. SELLERS:
 16 Q On June 29, 2012, the morning of June 29, 2012, would you
 17 tell us what happened that day?
 18 A Yeah, I was visited by Rick Bush, and he wanted to know
 19 what he would have to do to get an honorary withdrawal from our
 20 local.
 21 Q Okay.
 22 A And we entered into a discussion and he said that it
 23 wasn't his, his intention was to go to work for a non-union
 24 electrical outfit. And I had told him that he couldn't do that
 25 with an honorary withdrawal, that he would have to withdraw his

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1 papers completely from the local Union. And I told him that,
 2 you know, I wasn't born yesterday, I got an idea what's going
 3 on. And I asked him who he was going to go to work for and
 4 hesitated at first. And then eventually I told him, I said
 5 listen, I know some things aren't as shiny over at Newark
 6 Electric as you might think.
 7 Q What's his name?
 8 A Rick Bush is, was a member of our local Union at that
 9 time.
 10 JUDGE CHU: And do you know who he worked for at that
 11 time?
 12 THE WITNESS: He didn't work for anybody at that time. He
 13 was unemployed.
 14 JUDGE CHU: What, did he give you an explanation as to why
 15 he wanted to withdraw?
 16 THE WITNESS: He wanted to go to work for a non-union
 17 outfit, is what his words were.
 18 JUDGE CHU: And why is it that you thought that was so
 19 unusual that you were saying you were not born yesterday?
 20 THE WITNESS: I heard different occasions that he had been
 21 stopped in Newark Electric and been speaking with people there.
 22 JUDGE CHU: To find work?
 23 THE WITNESS: I don't know why. I wouldn't, I wouldn't
 24 have any idea of, I knew he had worked at a farm outfit and was
 25 getting materials from Newark from time to time.

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1 JUDGE CHU: But he wasn't working at that time.
 2 THE WITNESS: He was not working for the Union at that
 3 time. It's not unheard of for guys to go out and work as
 4 maintenance or other, other entities or other crafts when
 5 they're not working.
 6 JUDGE CHU: All right, thank you, continue.
 7 BY MS. SELLERS:
 8 Q What did you do after Mr. Bush left your office?
 9 A Tried to get a hold to him.
 10 Q Jim Colacino?
 11 A Yes.
 12 Q And why did you call Mr. Colacino?
 13 A To see what was going on. I mean I had already received
 14 the one letter and now it's the, nothing really happened and
 15 still, there's still people working there and I needed to know
 16 what was going on.
 17 Q What do you mean by "what was going on"?
 18 A It says that he's terminated, is not terminated, I needed
 19 to try and find out where he stood and what was going on.
 20 Q And did you get a hold of Mr. Colacino?
 21 A No, I did not.
 22 Q What happened next that day?
 23 A I was visited by two ladies. I can't remember the last
 24 names.
 25 Q And who were they?

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1 THE WITNESS: No, we've had one that says Newark Electric.
 2 JUDGE CHU: Other than yourself have any other business
 3 organizers or managers signed off on letter of Assent for Newark
 4 Electric 2.0?
 5 THE WITNESS: No.
 6 BY MS. SELLERS:
 7 Q You said you also received fund contributions, what months
 8 and for what companies were the fund contributions?
 9 A They were April, May, and June, and they all were for
 10 Colacino Industries.
 11 Q Okay. And General Counsel's Exhibit 14, do you recognize
 12 that?
 13 A Yes.
 14 (General Counsel Exhibit 14 identified)
 15 Q And is this what they handed you, this sheet with the
 16 photocopy with the actual checks?
 17 A With the actual checks, yes.
 18 Q Okay. Now, did they give you any other documents?
 19 A Yes, there's 15 over here.
 20 Q And what's General Counsel Exhibit 15?
 21 (General Counsel Exhibit 15 identified)
 22 A It's the, I received this that says, "I, blank", received
 23 the monthly Union payments for April, May, June 2012, a letter
 24 of termination", that was sent for Colacino Industries, Inc.
 25 Q And the letterhead for this letter is on what?

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1 A That period was doing estimating for Newark Electric at
 2 that time. It was Jessica Volte. I don't know what her
 3 involvement was there. I know she was working summer help or
 4 what, I have no idea. But they brought Newark Electric's back,
 5 and a letter to me stating that Newark Electric didn't want to
 6 be a Union --
 7 Q Do you recognize what's been marked as General Counsel's
 8 Exhibit 13?
 9 (General Counsel Exhibit 13 identified)
 10 A Yes.
 11 Q And what company of Respondent's is on the letterhead?
 12 A The letterhead for?
 13 Q GCX-13.
 14 A Thirteen is Newark Electric.
 15 Q Okay. And then you said that it was terminating, can you
 16 please read that paragraph and tell me -- you don't have to read
 17 it out loud just read it to yourself and tell me what company
 18 they're trying to terminate the letter with the letter of Assent
 19 for?
 20 A Newark Electric 2.0.
 21 Q And again at that line do you know what Newark Electric
 22 2.0 was?
 23 A No, I did not.
 24 JUDGE CHU: You signed off on a letter of Assent with
 25 Newark Electric 2.0?

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1 A Colacino Industries.
 2 Q And when did you receive the letter of termination for
 3 Colacino Industries was it that day?
 4 A No.
 5 Q When was it?
 6 A Back on April 12.
 7 Q Okay.
 8 MS. SELLERS: I offer General Counsel's Exhibits 13
 9 through 15.
 10 MR. TREVETT: No objection.
 11 JUDGE CHU: Thank you. As marked, admitted into evidence.
 12 (General Counsel Exhibit 13 through 15 received)
 13 BY MS. SELLERS:
 14 Q Now, when you received these documents from Ms. Phelps
 15 (ph) and Ms. Berry (ph) did you have a conversation with them or
 16 did they just drop them off?
 17 A They dropped them off and, and I got a little excited and
 18 I apologized to Ms. Phelps for getting excited, but I told them
 19 that I'd had trouble getting a hold of Jim Colacino, and then if
 20 they would give him a message for me, that I still considered
 21 him to be a Union contractor.
 22 And I also found out earlier that, I'd also found out just
 23 prior to that that he had terminated Jim Colacino, and then I
 24 had, I mean that he had terminated Tony Blondell. And that I
 25 was going to be filing a grievance on Tony's behalf for wrongful

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1 termination. I said if you could tell Mr. Colacino that, that
2 would be greatly appreciated.
3 Q When did you find out that Tony, Mr. Blondell was
4 terminated?
5 A Through a phone call Tony had called me.
6 Q When?
7 A Prior to this meeting within, you know, half-hour to an
8 hour before that.
9 Q So, okay. Did you do anything else that day with regard
10 to --
11 A Yeah, I contacted Don.
12 Q We'll get to that in a minute, but did you contact anybody
13 else?
14 A Well, I tried to contact Jim, yeah.
15 Q Jim Colacino?
16 A Yes.
17 Q And did you eventually hear from Mr. Colacino?
18 A I eventually heard from Scott Barra.
19 Q Okay. Who is Scott Barra?
20 A Scott Barra is somebody who I had referred there. He's
21 one of our, he's one of our members and said that Jim wanted to
22 meet.
23 Q And did you arrange for a meeting?
24 A Yes.
25 Q And when was that?

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1 to. He also said he wanted the ability to hire people. I told
2 him I didn't have a problem with that as long as the people who
3 did electrical work became signatory, became Union members.
4 He also said that he had, he believed that the letter of
5 Assent C that was signed prior to assigning the second one that
6 was signed by Colacino Industries superseded that, the first
7 one. And I told him in no way, shape or form would I ever agree
8 to that because that's not what the intention was. It was a
9 bookkeeping issue.
10 Q So, it was a bookkeeping issue, what did that mean at that
11 time, could you explain what that meant at that time in that
12 letter of Assent?
13 A I explained to him that he was still considered, and I
14 still considered him a Union contractor and was going to
15 continue to consider him as a Union contractor.
16 JUDGE CHU: Which company did you tell him that you still
17 considered it to be a Union --
18 THE WITNESS: Newark Electric.
19 JUDGE CHU: Contractor.
20 THE WITNESS: Correct, Newark Electric.
21 BY MS. SELLERS:
22 Q Did you, it sounds like you guys came to some possible
23 compromise. Did you resolve all issues and you could go forward
24 as --
25 A No, no, we had it done there it looked promising. And we

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1 A July 2nd.
2 Q And did that meeting happen?
3 A Yes, I did.
4 Q Where was the meeting held?
5 A That was held in Newark Electric's offices, in front of
6 Jim's office.
7 Q Where is that?
8 A It's on Harrison Street.
9 Q In?
10 A In Newark.
11 Q Newark, New Jersey?
12 A New York New York.
13 Q And who was at this meeting?
14 A Myself, Jim Colacino, Doug Gary, Tony Blondell, and Scott
15 Barra.
16 Q And was this meeting in the morning, afternoon, when was
17 it?
18 A It was during regular business hours, I think it was late
19 morning, late morning or early afternoon.
20 Q And what was said at this meeting?
21 A Jim asked us, he said that he needed the ability to hire
22 programmers and have people that programmed and did electrical
23 work at the same time. I said I didn't have a problem with
24 that, that would, you know, as long as when they're doing
25 electrical work they paid into the funds like they're supposed

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1 decided that we would meet again after the, you know, we're
2 close to the 4th of July holiday and we would meet again on July
3 9th.
4 Q And did that meeting happen?
5 A No, it did not.
6 Q And why not?
7 A I was getting ready to have, I was actually going out for
8 an early lunch somewhere around 11:00, getting ready to go into
9 Wegman's and the phone rang and it was Vicky Bliss. And she was
10 explaining to me that Jim was hung up on a job elsewhere, was
11 not going to be able to make the meeting, and that it didn't
12 really matter because it was his intention to be a non-union
13 contractor again.
14 Q Back at that meeting you said Tony Blondell was there?
15 A Yes.
16 Q Was his termination discussed?
17 A Briefly but it was only discussed because it had been
18 resolved prior to that meeting.
19 Q What was offer?
20 A He, they offered him his job back with no recourse and
21 figured let sleeping dogs lie, go ahead.
22 Q So, did you -- consider that?
23 A No, I did not.
24 JUDGE CHU: He said you didn't --
25 THE WITNESS: Tony, yes.

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1 JUDGE CHU: I saw some document that he was also a
2 foreman.
3 THE WITNESS: Yes.
4 JUDGE CHU: Is the foreman still part of the Union?
5 THE WITNESS: Yeah, the foremen are covered in our
6 collective bargaining agreement, absolutely.
7 JUDGE CHU: Thank you, go ahead.
8 BY MS. SELLERS:
9 Q Did you respond to Ms. Bliss' comment that Mr. Colacino
10 was no longer going to be --
11 A I again responded the same way I had from the beginning,
12 is that I am still considering Mr. Colacino and Newark Electric
13 as a Union contractor.
14 Q Did anything else happen that day?
15 A By the time I got back from Wegman's, there was a Newark
16 Electric in our unit hall parking lot and Scott Barra was there
17 waiting for me.
18 Q Why was Mr. Barra --
19 A He asked the same question that Mr. Bush asked, how he
20 could do a honorary withdrawal, and I explained to him that if
21 he was going to be staying with Newark Electric because he
22 thought they were going to be a non-union outfit that he could
23 do an honorary withdrawal he would have to, he would have to get
24 rid of his card.
25 But I also explained to him as his representative that I

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1 Q Did either Mr. Barra or Mr. Bush explain directly why they
2 needed to relinquish their membership?
3 MR. TREVVETT: Well, I'm going to object with hearsay at
4 this point. I mean these two guys, this is really not part of a
5 charge, and these two guys they could be subpoenaed to testify
6 if she wants that in evidence.
7 JUDGE CHU: Yes, I don't need this line of questioning.
8 Objection is sustained. It doesn't go into the heart of the
9 issue of the government. I don't really need to know why they,
10 if they gave a reason why they --
11 MS. SELLERS: Well, except for his letter alleged that Mr.
12 Blondell's termination or layoff was due to the fact that Mr.
13 Colacino forced all of his employees to be there, rescind their
14 Union membership or be laid off.
15 JUDGE CHU: Are they charges pending with these employees
16 allegedly being forced to relinquish their membership or be laid
17 off?
18 MS. SELLERS: No.
19 JUDGE CHU: That's just pure speculation.
20 MS. SELLERS: Okay.
21 BY MS. SELLERS:
22 Q Did you ever notify Colacino directly that you felt he was
23 still a Union contractor?
24 A I was never able to get a hold of him to do that.
25 Q Did anybody else notify him on your behalf that you felt

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1 was going to fight Newark Electric on this, that I believed they
2 were still a Union contractor and still to this day believe
3 they're a Union contractor, and that if he was to relinquish his
4 card he could not work for them if that was found.
5 Q Okay.
6 A And he relinquished his card anyways.
7 Q This is marked as General Counsel's Exhibit 16, do you
8 recognize it?
9 (General Counsel Exhibit 16 identified)
10 A Yeah, it's Scott Barra, he wrote that right there in front
11 of me that he relinquished his card. And then I marked it
12 underneath received July 9, 2012, signed it, put it in his
13 folder.
14 Q Did any other members withdraw their membership from the
15 Union?
16 A Yes.
17 Q Who?
18 A Rick Bush.
19 Q When did that happen?
20 A Well, approximately a week later.
21 Q And how did Mr. Bush relinquish his membership?
22 A Same, same way, he wrote me a letter. I was not there to
23 receive that letter. It was just taken in by our secretary and
24 she put it on my desk. And when I opened it and read it, I
25 signed it and put it in his folder.

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1 that he was still a Union contractor?
2 A Yes.
3 Q Who?
4 A Don Oliver did in a letter, hired Whitman (ph) and King to
5 represent us in this matter.
6 Q Do you recognize General Counsel's Exhibit 18?
7 A Yes, I do.
8 (General Counsel Exhibit 18 identified)
9 Q What is it?
10 A This is a letter that Don Oliver wrote to Newark Electric.
11 Q And were you copied on this letter?
12 A Yes, I was.
13 Q Did Mr. Blondell continue to work for Mr. Colacino
14 indefinitely?
15 A No.
16 Q Is he still working there?
17 A No.
18 Q What happened?
19 A Eventually he was let go.
20 Q He was let go. How did you become aware that he was let
21 go?
22 A Tony came, he came in and signed the book that's what our,
23 that's what our members do when they're done.
24 Q Did he explain to you --
25 A With employment.

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1 Q -- why he had been laid off?

2 A He said that Jim wished to be a non-union company. Jim

3 Colacino wished his company to be non-union so he was done.

4 Q Did Respondent make anymore fund contributions?

5 A He made contributions for on behalf of Mr. Rondell for

6 every hour he worked, yes.

7 Q And do you recall when Mr. Blondell was laid off?

8 A It had to be July 20th, I believe.

9 Q Now, so, well.

10 MS. SELLERS: So, I would offer General Counsel's Exhibits

11 16, 17, and 18.

12 MR. TREVETT: I'm going to object to 16 and 17 unless

13 there's, they're not relevant and beyond the scope of the

14 charges of the letters from Mr. Bush and Mr. Barra purportedly.

15 JUDGE CHU: I'll allow it in. It's just for background

16 information. I didn't allow the acting General Counsel to delve

17 into it too deeply other than to background information. It's

18 admitted.

19 (General Counsel Exhibits 16 and 17 received)

20 MR. TREVETT: I also have an objection to Exhibit 18 on

21 the basis there's no indication that it was actually sent to Mr.

22 Colacino. It's not a signed document and the witness has not

23 laid a foundation for knowledge as to Mr. Colacino ever actually

24 receiving this document.

25 MS. SELLERS: Unfortunately, the signed copy does not, a

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1 copy of the signed copy was not kept by Mr. Oliver. I am

2 willing to question Mr. Colacino about it when he testifies if

3 you prefer.

4 JUDGE CHU: Let's hold this off and if you can lay a

5 foundation as to whether this document is actually sent and

6 received you can do it on examination.

7 MS. SELLERS: Well, we know that Mr. Davis testified he

8 received it as a carbon copy. But you're correct in that Mr.

9 Davis did not testify to the fact that Mr. Colacino, so.

10 MR. TREVETT: I don't obviously, I don't have any

11 objection to her asking Mr. Colacino about this document. But

12 at this point in time I don't think the proper foundation has

13 been laid.

14 JUDGE CHU: That's correct, and I'm saying the acting

15 General Counsel can lay the foundation when Mr. Colacino

16 testifies, all right.

17 MR. TREVETT: Yes, sir.

18 JUDGE CHU: So, let's put this aside and reserve it for

19 the moment.

20 BY MS. SELLERS:

21 Q Now, I'd like to discuss with you the three different

22 companies that were mentioned here today, Newark Electric,

23 Newark Electric 2.0, and Colacino Industries. Are you aware of

24 who the owner is of Newark Electric?

25 A Jim Colacino.

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1 Q And why do you believe it's Jim Colacino?

2 A Because of his business card and he acted as such every

3 time I'm --

4 Q Are you aware of who the owner is in Newark Electric 2.0?

5 A No.

6 Q Are you aware of who the owner is in Colacino Industries?

7 A Yes.

8 Q Who?

9 A Jim Colacino.

10 Q And why do you believe Mr. Colacino to be the owner?

11 A Because he's always acted and signed on that path.

12 Q Are you aware of what work employees perform for Newark

13 Electric?

14 A Yes.

15 Q Why are you aware?

16 A Because their vans are loaded with electrical equipment

17 and that's who I provided an electrician to.

18 Q And what kind of work do they perform?

19 A Electrical work.

20 Q Are you aware of what type of work the employees in Newark

21 Electric 2.0 perform?

22 A No.

23 Q Are you aware of what --

24 MR. TREVETT: I'm sorry, I didn't hear the answer.

25 THE WITNESS: I said no.

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1 BY MS. SELLERS:

2 Q Are you aware of what type of work the employees at

3 Colacino Industries perform?

4 A Yes.

5 Q How are you aware?

6 A They get in the same Newark Electric vans and perform the

7 same work, perform electrical work.

8 Q How are you aware?

9 A Because I provided an electrician to them.

10 Q And do you know where Newark Electric office is located?

11 A Harrison Street in Newark, New York.

12 Q And what about Newark Electric 2.0?

13 A I would assume that same spot.

14 Q Do you know?

15 A No.

16 Q What about --

17 MR. TREVETT: I'm sorry, I didn't hear that.

18 THE WITNESS: No, sorry. My no's are soft, no.

19 BY MS. SELLERS:

20 Q Do you know where Colacino Industries office is located?

21 A Yes, Harrison Street, same spot as Newark Electric.

22 Q And how do you know that?

23 A Because that's where I visited Mr. Colacino.

24 Q And can you please describe for us the office that houses

25 Newark Electric and Colacino Industries?

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1 A Yeah, as, as you enter there's glass doors, then you veer
2 to the left and that's where the receptionist sits, and right
3 past that there's a hallway just to your left. And in that
4 hallway there's three offices. There's one in the front that's
5 generally used, on the left-hand side of these three offices
6 generally used by whoever. And there's one on, just one on the
7 right which is generally used by whoever.

8 The center one is Dick Colacino that's loaded with
9 different books for estimating and buying materials. And then
10 the last one on the left the inside was for Vicky Bliss,
11 sometimes vacant, sometimes not. And then you go through a
12 little kitchenette, go to your right, go back up in the back
13 steps and Jim's office is way in the back. And then the
14 conference room is further to the right, and the parts room is
15 even further to the right than that.

16 Q Now, do any of those offices that you described say a
17 company name on the door distinguishing --

18 A No. --

19 Q -- one office from another office?

20 A No.

21 Q And throughout your testimony you stated that you called
22 James Colacino on multiple occasions as a representative of
23 Newark Electric or Colacino Industries, how many contact numbers
24 do you have for Mr. Colacino?

25 A Two.

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1 any clothing with one of the company's names or logos on it?

2 A Yeah, Newark Electric.

3 Q That's what the clothing --

4 A That's what the clothing said, yes.

5 Q Have you ever seen them wearing clothing that says
6 Colacino Industries?

7 A No.

8 Q What about Newark Electric 2.0?

9 A No.

10 MS. SELLERS: I have no further questions for this witness
11 at this time.

12 JUDGE CHU: You just gave testimony, and earlier you gave
13 the same testimony that you're not familiar with Newark, I'm
14 sorry, Newark Electric 2.0.

15 THE WITNESS: I didn't know of Newark Electric 2.0 until I
16 received a letter, until, until I received this letter on April
17 12th. And my --

18 MR. TREVETT: What exhibit is that, sir?

19 THE WITNESS: That's exhibit 12. Can I speak to this?

20 JUDGE CHU: Go ahead.

21 THE WITNESS: Can I speak freely?

22 JUDGE CHU: Go ahead.

23 THE WITNESS: Thank you. What the hell is NEC 2.0?

24 JUDGE CHU: Do you believe NEC 2.0 is Newark Electric 2.0?

25 THE WITNESS: That would be an assumption on my part,

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1 Q What are they?

2 A One is right there at Harrison Street, it was 331, I can't
3 remember off the top of my head anymore, and then his cell phone
4 number.

5 Q Okay. And when you called the Harrison Street number how
6 did the person who answered the phone answer the phone?

7 A Newark Electric.

8 Q Are you familiar with Respondent's vehicles?

9 A Yes.

10 Q How?

11 A Because he had quite a few white vans and they say Newark
12 Electric on the side, Newark Electric Power Authority.

13 Q Are you familiar with what they look like?

14 A They're parked out in front of his shop.

15 Q Have you ever seen a van out in front of his shop or on
16 the road or anything that says Colacino Industries on it?

17 A No.

18 Q What about Newark Electric 2.0?

19 A No.

20 Q I've handed you what is a photocopy of a photograph that's
21 marked as General Counsel's Exhibit 19. Is this the van you
22 were describing?

(General Counsel Exhibit 19 identified)

24 A No, he has multiple vans so I can't.

25 Q Have you ever seen any employees of Mr. Colacino wearing

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1 Judge. I mean like the first time I ever saw any NEC 2.0 is
2 when I received this letter.

3 JUDGE CHU: But then the letter from Donald Oliver to
4 Colacino that is acting General Counsel's Exhibit 18, which we
5 reserved for later on, does indicate 2.0, does it not?

6 THE WITNESS: Yes, it does. I didn't write that letter.

7 JUDGE CHU: And there was some monthly payroll records to
8 the benefit fund as in acting General Counsel's Exhibit 9 that,
9 that's Newark Electric 2.0, have you seen that?

10 THE WITNESS: Yeah, I did see that, and, and as I told
11 General Counsel as I only spot check all of these. And we do
12 business with several different contractors. And what I do is I
13 open them up. I know who's working for who already. I look to
14 make sure the benefits are paid properly, and that's about the
15 extent of it. I don't go to the top and see which contractor
16 paid what. I look to see that the persons that are on there are
17 getting what they're supposed to get.

18 JUDGE CHU: And again your testimony has been that you
19 don't recall signing off for any organizer or manager of the
20 local, signing off on a letter of Assent, either A or C, with
21 Newark Electric 2.0?

22 THE WITNESS: No, no one has signed.

23 JUDGE CHU: Thank you. Cross examination of this witness.

24 MS. SELLERS: Your Honor, may I offer General Counsel's
25 Exhibit 19?

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1 MR. TREVETT: Judge, some Voir Dire.
 2 JUDGE CHU: For 19?
 3 MR. TREVETT: Yes.
 4 JUDGE CHU: Go ahead.
 5
 6 VOIR DIRE
 7 BY MR. TREVETT:
 8 Q Mr. Davis, do you know who took this picture?
 9 A No, I do not.
 10 Q How did you come into possession of it? Well, strike
 11 that. Did you come into possession of it?
 12 A No, I just was given to it right here, right now.
 13 Q Okay. So, all you know is this is a picture of a van that
 14 says Newark Electric on it, that's all you know?
 15 A Yes.
 16 MR. TREVETT: I've no objection.
 17 JUDGE CHU: As marked I admit it GC Exhibit 19.
 18 (General Counsel Exhibit 19 received)
 19 JUDGE CHU: Are you ready to proceed with cross
 20 examination or do you want a five minute break?
 21 MR. TREVETT: Actually before I proceed with cross
 22 examination, Judge, I'd like to ask if there are any statements
 23 or affidavits of this witness in General Counsel's possession
 24 that I might review?
 25 MS. SELLERS: Yes, there are two affidavits. The first
 one is eight pages and the second one is five pages.

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1 is that correct?
 2 A Yep.
 3 Q Did you sign that document?
 4 A Yes, I did.
 5 Q Okay. You just didn't have a copy of the signed version
 6 of that?
 7 A I don't have a copy of the signed one, no. I just signed
 8 it.
 9 Q Okay. So, you're acknowledging at least at that point in
 10 time receipt of all those documents.
 11 A Yeah, I acknowledged the receipt of the documents,
 12 correct.
 13 Q Okay. Now, the address 2026 Harrison Street is that the
 14 address where Colacino Industries is?
 15 A I don't know if that's it or not. He moved across the
 16 street during the time when we were, and I don't know the exact
 17 number. I just know it's on Harrison Street. I know it's a
 18 small town. I don't pay attention to the exact address.
 19 Q Okay.
 20 A Because when I first started a relationship he was on one
 21 side of Harrison Street and then he went to the other.
 22 Q When did you first start the relationship?
 23 A Well, we first started meeting back in 2009.
 24 Q And your testimony is that he was in a different building
 25 at that time?

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1 JUDGE CHU: Mr. Davis prepared two affidavits?
 2 MS. SELLERS: Yes, they're in this first of the --
 3 JUDGE CHU: Why don't we take a 10 minute recess, counsel,
 4 so you can take a look at it?
 5 MR. TREVETT: Thank you, very much, Judge.
 6 JUDGE CHU: All right. Off the record. Come back around
 7 quarter to 3:00.
 8 (Whereupon, a brief recess was taken)
 9 JUDGE CHU: Back on the record. Mr. Davis, I remind you
 10 you're still under oath. Cross examination of this witness,
 11 please.
 12 MR. TREVETT: Yes, Judge, thank you.
 13 JUDGE CHU: Thank you.
 14 CROSS EXAMINATION
 15 BY MR. TREVETT:
 16 Q Mr. Davis, could you take a look at General Counsel
 17 Exhibit 15.
 18 A Fifteen?
 19 Q Fifteen, 1-5. Now, you indicated I believe that that was
 20 in that packet of information that was, I believe it's Exhibits
 21 13, 14.
 22 A This is the one I had marked 15?
 23 Q That's the one, do you see the 15 at the bottom?
 24 A Yes.
 25 Q Okay. So, that came together in a packet with 13 and 14

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1 A That's correct.
 2 Q But the same part of Harrison Street.
 3 A Yes.
 4 Q Same section of town if you will.
 5 A Yep.
 6 Q All right. Now, you testified about the letter of Assent
 7 A and a letter of Assent C, and you indicated -- and I'm going
 8 to refer you to General Counsel Exhibit 5 if I could, please, it
 9 looks like this right here.
 10 A Let me see if mine is marked the same.
 11 Q It's the blank one.
 12 A This is the blank one?
 13 Q Yes.
 14 A Let me see if I can find it here. I'm sure I will. I've
 15 got about three or four different ones here. All right, I've
 16 got five.
 17 Q Okay, thank you. Now, I think you testified that after
 18 the one year period the person would have 150 days notice
 19 provision is that correct?
 20 A That's what it says on the letter of Assent A, yes.
 21 Q But the letter of Assent C provides for only 100, is that
 22 correct?
 23 A Yes.
 24 Q So, there is a difference there between the two A and C?
 25 A Yes, there is.

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1 Q Okay. Now, and I believe your testimony if I understand
2 correctly is none of the Respondent's -- and I'm talking about
3 Newark Electric, Corp., Newark Electric 2.0, and how Respondents
4 have ever signed the letter of Assent A with Local 843.
5 A Physically signed, no.
6 Q The only two letters of Assent that were signed were the
7 two we have in evidence, one for Newark Electric, and one for
8 Colacino Industries, is that the only two that exist?
9 A That's correct.
10 Q Okay. You testified that you knew Richard Colacino.
11 A Yes.
12 Q And that's Jim's dad?
13 A Yes.
14 Q How
15 A I've always called him Dick, but I'm sure that that's the
16 person, yeah.
17 Q Dick Colacino.
18 A Yeah.
19 Q How long have you known Dick?
20 A About the same amount of time as I've known Jim, about the
21 time I started.
22 Q Since --
23 A Since 2005.
24 Q -- 2005?
25 A Yeah.

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1 Q So, there's a lot of name recognition. Did you ever know
2 whether Mr. Colacino, and I'm going to say Dick Colacino had any
3 ownership interest in Newark Electric Corp.?
4 A At one time, it was before I started he was involved with
5 it. My understanding is that he had signed it over to Jim.
6 Q Okay.
7 A That's why I dealt with Jim the whole time.
8 Q And if we look at the letter of Assent C, it's exhibit Six
9 but it's the one that was signed with the name Newark Electric.
10 You indicated that that, the blanks were filled out by your
11 administrative person, Phyllis, is that correct?
12 A That is correct.
13 Q So, she's put all that information in?
14 A Yes, she did.
15 Q Now, you testified that you thought she had gotten the
16 information from Vicky Bliss. Why do you think that?
17 A I don't think, I know. I got to Vicky, I, I got the
18 information from Vicky Bliss and I gave it to her to get off the
19 sheets.
20 Q So, you're the one who provided the information to fill in
21 these blanks.
22 A Yes.
23 Q Directly to Phyllis?
24 A Yes, I did.
25 Q Okay. Now, take a look if you would at General Counsel

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1 Q Okay. When you first knew Mr. Dick Colacino.
2 A Yep.
3 Q Did you know by whom he was employed or if he was
4 employed?
5 A He was employed by Newark Electric.
6 Q And why, what was the basis of that belief, sir?
7 A Basis of that belief?
8 Q Yes.
9 A On or about the time when this was all going on, it was
10 also in the newspaper because Mr. Colacino, Dick is a supervisor
11 and there was a blurb about him actually working for Newark
12 Electric and having Newark Electric do work for the county, so
13 that's how I knew that he must be employed there.
14 Q All right. Did you know Newark Electric Corporation to be
15 a separate company?
16 A I knew when I started Newark Electric to be Newark
17 Electric. I didn't know about a separate company. When this
18 whole thing started Newark Electric was all I knew about.
19 Q Is it fair to say then that Newark Electric is fairly well
20 known in the Newark area?
21 A Absolutely.
22 Q And probably in your MECA region?
23 A Absolutely.
24 Q Okay.
25 A Fairly well.

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1 Exhibit Seven, it's the business card.
2 A Yes.
3 Q Did you provide that business card to General Counsel?
4 A Yes, I did.
5 Q And where did you get it?
6 A I got it from Jim in one of our very first meetings.
7 Q So, and when would that be, back in 2005?
8 A Back in 2005, yeah, correct.
9 Q I did want to go back to the previous example, or the
10 previous document Exhibit Six, which is that letter of Assent C
11 with Newark Electric.
12 A Okay.
13 Q The stamp I think you testified that stamp was the
14 approval from --
15 A Our international --
16 Q -- the international?
17 A Our international office, correct.
18 Q And once the six copies go there and it gets approved what
19 happens to the six copies do you know?
20 A Quite honestly I don't. My office staff takes care of
21 that, so.
22 Q Okay. Is it unusual to have a lag from February to,
23 because I think it's dated February 24th, but the stamp says May
24 6th, is that an unusual time lag?
25 A No. The international was just added. It's the

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1 international that deals with documents from all over the
2 country so, no, that's not an unusual lag.
3 Q Did you have any, did you have any contact with the
4 international about this to discuss it at all?
5 A No.
6 Q And do you know whether Mr. Culver did or not?
7 A No.
8 Q And he, did you work with Mr. Culver on this?
9 A I worked with Mr. Culver on a daily basis, yes.
10 Q Well, let me ask you this, do you know whether Mr. Culver
11 had any discussions with the international. He signed this
12 agreement, do you know whether he --
13 A No.
14 Q -- had any discussions with him?
15 A No, it's pretty much standard procedure. I would doubt
16 that he would have a discussion with him.
17 Q Okay. I'm going to refer you to the first set of referral
18 notices that's General Counsel's Exhibit Eight, that's this
19 document. I'm trying to go through the exhibits in order, so.
20 A Well, I got them mixed up now, by the --
21 Q I don't know if that helps you.
22 A -- time I ran through them this one right here is a
23 referral termination notice --
24 Q Yes.
25 A Okay.

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1 problem.
2 Q Well, let me ask you about the first two pages. Joe
3 Jazinski is that?
4 A Jazinski?
5 Q Jazinski, and the second one is Scott Sarra, is that
6 right?
7 A Yes.
8 Q Now, neither of those two have anything in a termination
9 does that mean they kept working after those dates of?
10 A No, it doesn't, doesn't mean. I, these sheets are sent
11 out at the time and quite honestly if 35 percent of my
12 contractors sent them back I'd be amazed. I mean Jim being a
13 Newark contractor did the first time, but the second time I
14 didn't see it and it's not unheard of.
15 Q So, the purpose of this record then is just to show that
16 your hall sent these folks over --
17 A Correct.
18 Q Okay. Why don't I refer you to General Counsel Exhibit 9,
19 which is this document here.
20 A Yep, payroll.
21 Q So, at the top this -- first of all, what is this
22 document, is this a hall document or an Employer document, who
23 generates this document?
24 A This one on the top that, that's an Employer generated
25 document, that's not anything we have. The ones underneath

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1 Q Do you see that? All right. So, if you look at for
2 example the third page back there are some, the termination
3 section is filled out is that correct?
4 A The one that says Roger Mahoney at the top?
5 Q Correct.
6 A Yes.
7 Q And so that was filled out by Colacino for Newark?
8 A Yeah, Cory Brink, employee representative, Employer
9 representative filled it out.
10 Q Okay. Do you review these documents?
11 A Sometimes yes, sometimes no. For the most part I just
12 looked to see that they're, what day they were terminated, so,
13 and then, were laid off and then I put in their file folder.
14 Q So, when they're laid off does that, what does that mean,
15 does that mean the job is done or what would that mean?
16 A It means that either the contractor ran out of work.
17 Maybe the contractor didn't like him. Maybe the employee quit.
18 There's a spot on this for everything. And this one just says
19 eligible for rehire, yes. And then he was terminated 8, to
20 6/17. Now, this job here was a, I know what this job was. It
21 was a wire pull.
22 It's not unheard of for a contractor to gear out, hire a
23 guy for a day, pull the wire in, and then lay him off the next
24 day, that's what makes some of the Union jobs appealing is that
25 they can hire and layoff within the same day without any

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1 would be the ones we provide. We're still old school manual.
2 Q But the top one of this, so this was generated by Newark,
3 by the Employer.
4 A That's correct.
5 Q And it was sent to the hall.
6 A Yes.
7 Q Is that correct?
8 A That's correct.
9 Q Do you recall whether you reviewed this particular one or
10 not?
11 A I don't recall whether I reviewed it or not.
12 Q Which it does clearly identify Newark Electric 2.0 as the
13 Employer is that right?
14 A That's what it says on the top, correct.
15 Q And the second one simply says Newark Electric.
16 A Correct.
17 Q So, the first one -- now, the stamp received, I'm sorry,
18 let me, the first page, did that received stamp is that when, is
19 that your stamp, the hall stamp?
20 A Yes.
21 Q So, you received it on April 27th for this one.
22 A Yes.
23 Q Is there a way to tell, so the payroll period is from
24 March, for the month of March is that correct?
25 A This is the payroll period for, it says from March 1st to

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1 March 31st.
 2 Q So, there's a month lag between the time between the
 3 payroll period and the time it's sent to the hall basically?
 4 A Yeah, the way, the way we operate is the month of March is
 5 to be received by the 15th of April.
 6 Q Okay.
 7 A So.
 8 Q So, and here the Employer would roundup all the time for
 9 Mr. Blondell on this first page for the month of March and then
 10 send it to the hall by April 15th, 15th for the next month. And
 11 this stamp shows that she received it on the 27th?
 12 A Correct.
 13 Q Okay. Do you stamp them all in as soon as you receive
 14 them or what's the procedure there?
 15 A I don't, my payroll, my, my secretary does, correct.
 16 Q So, for the second one again we refer to the payroll
 17 period basically for the month of April in 2011, is that
 18 correct?
 19 A Correct.
 20 Q And it shows Mr. Blondell again as working. And it was
 21 received however on May 24th. So, again you've got that one
 22 month lag give or take.
 23 A Uh-huh.
 24 Q Now --
 25 JUDGE CHU: Is that yes?

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1 Q Dues.
 2 A Dues are dues.
 3 Q That's self-explanatory.
 4 A Uh-huh.
 5 Q What's LMCC?
 6 A Labor Management Cooperative Committee.
 7 Q What is that?
 8 A That's the, it's the joint account for contractors where
 9 we use for advertisement, advertising and other such things.
 10 Q All right. And G --
 11 A G is the same thing but local.
 12 Q And AMF?
 13 A That is a contractor fund. I'm not positive of that, what
 14 that is.
 15 Q And NEBF?
 16 A NEBF is another pension, that's the national pension
 17 that's paid in on everybody.
 18 Q Okay.
 19 A And NEIF is another contractor.
 20 Q All right. And so this monies, these monies would be
 21 remitted with this by the Employer to your hall?
 22 A Well, --
 23 Q Or this would show it was paid?
 24 A This would show it was paid, the, the health and welfare
 25 pension, annuity, JATC, COPE, Due would come here, NEBF, and

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1 THE WITNESS: Yes, I'm sorry.
 2 BY MR. TREVVETT:
 3 Q Could you explain for us each of the heading topics and
 4 what they mean just so we know and are clear for the record
 5 here.
 6 A Each of the, yeah, yeah. It says ready which is their
 7 regular pay rate, hours obviously is hours, H&W is what our
 8 health care plan called Health and welfare. And so --
 9 Q And above -- I'm sorry, let me stop you there. Above that
 10 there's a number 6.6, what does that mean?
 11 A That was the current rate at that time.
 12 Q It was 6.6 percent?
 13 A I believe, I mean this isn't our document but at that time
 14 \$6.60 an hour was our healthcare.
 15 Q Okay. So, the next one is pension is that right?
 16 A Yep, pension was \$5.25 an hour.
 17 Q And the next one is, what's that, annuity?
 18 A That's an annuity.
 19 Q What does that mean?
 20 A That's three dollars, that's, it's an, personal annuity.
 21 We also have a pension and an annuity.
 22 Q All right, next column?
 23 A JATC, that's our joint apprenticeship training fund.
 24 Q COPE is the political thing?
 25 A That's correct.

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1 everything past the dues to the right was actually paid to NEC
 2 Q Now, it says above there on the second page, "Not a NECA
 3 member, do not pay", what does that mean?
 4 A It means he does not -- where is that?
 5 Q In the black bar, do you see that? I'm on the second
 6 page.
 7 A Oh, second page.
 8 Q Yes.
 9 A NECA has a dues structure similar to ours, so if he's not
 10 a member he's not paying those.
 11 Q All right, so this would indicate that Newark Electric was
 12 not a member of NECA is that correct?
 13 A That's correct.
 14 Q And third page again, same, same setup, again we have
 15 Newark Electric 2.0, is that correct?
 16 A Yep.
 17 Q Now, these first three pages are just referencing Tony
 18 Blondell, is that correct?
 19 A Uh-huh.
 20 Q Anthony Blondell.
 21 A That's what it says on there.
 22 Q Does that mean that that was the only individual who was
 23 working as a Union employee from the hall?
 24 A March 2011, does that mean that he was the only one.
 25 Q We've got statements for --

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1 A I'm looking at it, yeah, I believe that that would have
2 probably been in the time period where he was finishing up the
3 work.
4 Q But he was working as a Union employee at that time?
5 A Yes, but if I remember correctly testified in the
6 beginning that on the employees that he had were to stay at the
7 rate.
8 Q Mr. Bebernitz I think --
9 A Yeah, Bebernitz and Patterson would stay at a different
10 rate until we finished up the project that he had already
11 started, so that's probably during that time frame. It's right
12 after he first signed, so.
13 Q Okay. So, for March, April, May, the only Union employee
14 from the hall is Mr. Blondell.
15 A Correct.
16 Q Now, we switched to the fourth page it looks like a
17 different form. That's your, your form?
18 A Yeah, that's our original, yeah, that's our form.
19 Q So, that's, but that's still the information on this form
20 that's filled out by the Employer correct?
21 A That's correct.
22 Q And again it's on this one it says Newark Electric 2.0?
23 A Uh-huh.
24 Q For the month of June?
25 A Yep.

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1 A Okay.
2 Q Which is the month of June 2011.
3 A Employer operating --
4 Q Yes, so that was filled in by the Employer.
5 A Uh-huh.
6 Q Now, if you look at the previous three pages which is I
7 guess the other version of this form, it doesn't have a, is
8 there a spot for that information on that form?
9 A On the previous three that were provided by Newark
10 Electric?
11 Q Correct.
12 A I don't know if there's a spot on that form, because it's
13 never been pointed out to me. So, that's why I said that's
14 their form that they just kept track of and submitted with these
15 forms.
16 Q Do you know where they got that form?
17 A This form here?
18 Q The electronic one?
19 A Yeah, I believe they made it up.
20 Q And if we go to the fifth page which, of the documents,
21 which is the month of, also for the month of June --
22 A Uh-huh.
23 Q -- there's, this is listed as Colacino Industries is that
24 correct?
25 A That is correct.

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1 Q And now we have a reflection of two employees, Mr.
2 Blondell and Mr. Barra is that correct?
3 A Correct.
4 Q And Scott Barra was also a Union employee from the hall at
5 that time?
6 A That's correct.
7 Q Did Mr. Barra hold any Union offices at that time?
8 A At that time I believe he was the vice, he was the vice
9 president at that time until June until July of 2011.
10 Q Did his role as a Union officer have anything to do with
11 assignment to Newark Electric 2.0?
12 A No.
13 Q How was he, how did he come to be assigned to Newark
14 Electric 2.0?
15 A I believe Clark Culver assigned him there.
16 Q You were not the business agent there --
17 A I was not the business agent --
18 Q -- not the business manager.
19 A -- no.
20 Q Okay. Now, unlike, well, let me ask you this. On the
21 fourth page, on your, your handwritten form there's a place for
22 the Employer Federal Registration number, do you see that on
23 this one?
24 A The fourth page I'm trying to --
25 Q Yes, the fourth page.

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1 Q Okay. And listing four employees this time.
2 A Uh-huh, yes.
3 Q Did all four of those employees come from the hall?
4 A Yes, they did.
5 Q And this is a two-page document, or a one-page, two-page
6 document, correct?
7 A Yes.
8 Q And so the second page which is actually the last page of
9 the exhibit has two more employees?
10 A Yes.
11 Q So, for the month of June Newark Electric 2.0 has two
12 employees listed, that's Mr. Blondell and Mr. Barra, and that's
13 on the fourth page. And then for Colacino Industries, different
14 company has six employees listed, is that correct?
15 A Yes.
16 Q And the federal, the Employer federal register number for
17 Colacino Industries listed on pages, the last two pages is
18 different from the one that was listed for Newark Electric 2.0
19 is that correct?
20 A From the first one?
21 Q Yes, if you could --
22 A Page one?
23 Q I'm going just with the month of June.
24 A That, the month of June, yes, they're different.
25 Q The month of June.

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1 A Yeah, they're different.
 2 Q We have this one for Newark Electric 2.0?
 3 A Yep.
 4 Q And I'm just saying this one as compared to the other two
 5 different company names, different Employer ID numbers.
 6 A Yes.
 7 Q Now, I want you to look at two exhibits.
 8 MR. TREVETT: May I approach just to show him? All
 9 right.
 10 BY MR. TREVETT:
 11 Q Exhibit Six which is the Newark Electric letter of Assent,
 12 now I want you to look at that one. I want you to look at the
 13 second page of that document if you will, the one with the stamp
 14 on it, what's the Federal Employer ID Number on that document?
 15 A It's 16-127802.
 16 Q And what's the name that's been assigned to the Employer?
 17 A Newark Electric.
 18 Q Now, I want you to look at Exhibit Nine, which is the one
 19 I just went to, and if you would look over that page for June of
 20 2011, Newark Electric, do you see that?
 21 A It's 2-7-5-5-6-9-9-5-6.
 22 Q So, that's a different one all right.
 23 A Right.
 24 Q And now if you look at the following page, Colacino
 25 Industries, what's the Federal ID number is that?

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1 A It's 1-6, dash, 5-8-6-3-6-4.
 2 Q So, another different federal ID number is that correct?
 3 A Right.
 4 MR. TREVETT: May I have a minute, Judge.
 5 JUDGE CHU: Sure.
 6 MR. TREVETT: May I just have a minute here. Okay.
 7 BY MR. TREVETT:
 8 Q Now, if we go to Exhibit 11, and that's this other set of
 9 reports, do you see this?
 10 A The reports you said, okay.
 11 Q Yes, this document. So, this, these the first page these
 12 are all being reported under Colacino Industries for July?
 13 A This is month of July, correct.
 14 Q And during this period of time which covers from July of
 15 2011 all the way through it looks like March of 2012 is the last
 16 page, do you see that? These are being reported for Colacino
 17 Industries, Inc.
 18 A March of 2012 --
 19 Q Right, so --
 20 A -- does have any Employer ID number on it.
 21 Q No, I see that. But it looks as though, it looks at the
 22 top as though it's, the copy is bad. It looks like Colacino
 23 Industries.
 24 A If I had to guess --
 25 Q So, all of those --

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1 A -- I would say yeah, probably.
 2 Q Well, let me ask you this. The employees are reflected in
 3 these reports from July of '11 to March of '12, did you ever see
 4 any of them operating any company vehicles?
 5 A Yeah, Newark Electric.
 6 Q So, they were operating --
 7 A Yes.
 8 Q -- like you testified the Newark Electric vehicles is that
 9 right?
 10 A Yes.
 11 Q And no other vehicles as far as you know?
 12 A Nope.
 13 Q Now, Exhibit 12, which was in evidence, is the
 14 termination, the packet of termination letters for Colacino
 15 Industries do you see that?
 16 A Let me see if I can find it. Yes.
 17 Q There's, there's, is there any, there's no dispute is
 18 there that Colacino Industries is a company legitimately
 19 terminated its relationship under the letter of assent
 20 C?
 21 A There's no dispute on that? Well, it's dated July 20th.
 22 Q Right, are you, do you dispute that this was --
 23 A Well --
 24 Q -- this packet of documents did not terminate the
 25 relationship?

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1 A Did, do I dispute a, you, would you ask the question
 2 again? I don't --
 3 MS. SELLERS: Your Honor, I'm going to object because this
 4 calls for, General Counsel is not disputing that that
 5 terminating the relationship for Colacino Industries, and so
 6 it's not an issue in this hearing.
 7 MR. TREVETT: If that's a stipulation I'll take it.
 8 MS. SELLERS: It's not part of the complaint.
 9 JUDGE CHU: Okay, fine, if you, I didn't see that in the
 10 complaint or reflected as a charge but the --
 11 MS. SELLERS: General Counsel will stipulate that their
 12 relationship, the letter of assent C, signed on July 20, 2011,
 13 with Colacino Industries was correctly terminated under the
 14 terms of the letter of Assent.
 15 JUDGE CHU: Thank you. Will that work for you?
 16 MR. TREVETT: It does, Your Honor.
 17 JUDGE CHU: Thank you. So, as stipulated by acting
 18 General Counsel.
 19 BY MR. TREVETT:
 20 Q So, I think if you testified, is it your testimony that
 21 you never knew that Newark Electric 2.0 existed as a separate
 22 company, is that your testimony?
 23 A That is my testimony. Until I received this letter I
 24 never knew of Newark 2.0, or any C 2.0 existed.
 25 Q And which letter were you referring to, sir?

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1 A April 12, 2012.
 2 Q And if we look at the document that was marked as General
 3 Counsel 18, that's a letter from your attorney, correct?
 4 A Yes.
 5 Q And it's addressed to Mr. Colacino of Newark Electric 2.0?
 6 A Let me look at it again to make sure that's what it said.
 7 Yes.
 8 Q It's the only with King on it.
 9 A Yep, I'm aware of the one you're speaking of. Colacino is
 10 also spelled wrong.
 11 Q Did you have discussions with Mr. Oliver prior to the
 12 drafting of this letter?
 13 A The only discussion was that I considered them the Union
 14 contractor and would he represent us and contact us because I
 15 was, no one had ever contacted me back.
 16 Q Well, what exactly did you say to Mr. Oliver?
 17 A What exactly did I say? I said that, I explained to him
 18 that Newark Electric was a signatory contractor, and that they
 19 had not terminated in a timely fashion, and that I still
 20 considered them a Union contractor, and would he represent us
 21 and write a letter on our behalf.
 22 Q And those were your words to --
 23 A Those were my words to --
 24 Q -- Mr. Oliver?
 25 A -- Mr. Oliver, correct.

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1 Q How is it, if you know, do you know why Mr. Oliver would
 2 then reference Newark Electric 2.0?
 3 A Yeah, because I gave him this letter right here.
 4 Q What, what, which one is that?
 5 A I gave, I gave him one of these letters, let me pull it
 6 up. I have to remember which one I gave him.
 7 MS. SELLERS: It's GCX-13, try that one.
 8 THE WITNESS: Yes, that is the one.
 9 BY MR. TREVETT:
 10 Q All right. So, you had given General Counsel Exhibit 13
 11 to Mr. Oliver?
 12 A Yes.
 13 Q And then asked him to write a, represent you and write
 14 this letter?
 15 A Yes.
 16 Q And your testimony is you received a copy of this letter.
 17 A The King letter?
 18 Q I'm sorry, yes, Exhibit 13.
 19 A Yes.
 20 Q I want to go back to a point in time, if I may, when the
 21 second letter of assent C was signed on July 20th with Colacino
 22 Industries. Prior to that signing of that second letter of
 23 assent had you had any discussion with Mr. Colacino about the
 24 situation with Newark Electric not working out?
 25 A No, I mean he had talked about, I'm trying to remember

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1 back to that time and I'm going to say no.
 2 Q Well, isn't it true that for years Mr. Colacino he didn't
 3 want to sign up Colacino Industries with a Union?
 4 A No, for years he asked me to be double-breasted and I said
 5 that there's no way we could do that.
 6 Q So, you did not talk about the creation of a second
 7 company that would be the Union company, the 2.0?
 8 A Yeah, we did speak about it and that's when I told him
 9 that I could not do, we're not going to do a Union company and a
 10 non-union company, that we're, IBEW does not do double-
 11 breasting, and that's what that's considered. We don't do that.
 12 Q Well, let me ask you this. Is that not what you were
 13 doing when, thought you were doing when you signed up Newark
 14 Electric and Colacino was unsigned up?
 15 A No, because he under our preservation clause he can't do
 16 work for both companies. They can't, our people can't do work
 17 for both companies. He would have to sub it out to a Union
 18 company, and that's when he became, Colacino Industries became
 19 one when he signed.
 20 Q But Colacino Industries could certainly sub out Union work
 21 to Newark Electric, correct, the Union company?
 22 A Yeah, it could under, under --
 23 Q He just couldn't --
 24 A -- the terms of collective bargaining agreement, yeah,
 25 absolutely.

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1 Q It wouldn't violate the preservation of rights and the
 2 NECA or anything like that.
 3 A No.
 4 Q So, Newark Electric, or excuse me. Colacino Industries
 5 could be doing jobs as a non-union contractor, correct?
 6 A No, they could be doing work of different types. They
 7 could be installing sidewalks or something like that,
 8 absolutely. But if they did electrical work, no, they could
 9 not.
 10 Q Let me rephrase the question. Before Mr. Colacino entered
 11 into any letters of assent with your Union, before he had any
 12 relationship like that, Colacino Industries could certainly have
 13 done any kind of work even if it was Union work as a non-union
 14 Employer. He could do electrical work.
 15 A Correct.
 16 Q Right.
 17 A He could do electrical work, yes.
 18 Q Okay. So, if he wanted to try the Union out on a trial
 19 basis was there anything wrong with him forming a Union company
 20 and signing that company up to do it, the Union work?
 21 A Was there anything wrong, was there anything wrong with
 22 it?
 23 Q Right.
 24 A It's something that we wouldn't do. If he, if a company
 25 signs off I don't care if you've got three companies, one

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1 company, two companies, if one company signs up they're not
 2 allowed to sublet work at all. I guess is what the bottom line
 3 is from my, from my viewpoint when I would stand for it is, he
 4 would do electrical work would be done Union.
 5 Q Well, let me ask you this, we'll go back. You described
 6 the building that Colacino Electric and Newark Electric are in,
 7 right?
 8 A Yeah.
 9 Q You've seen the building?
 10 A Uh-huh.
 11 Q You've walked through the front doors?
 12 A Yes, I have.
 13 Q Both names are on the, one name is on one door, the other
 14 name is on the other door?
 15 A I don't recall but I'm sure if you're saying it is, it is.
 16 Q So, Colacino Electric is on one door. Newark Electric is
 17 on the other?
 18 A At one point in time there was also Tujolt Evono Electric
 19 (ph) on the door at one point in time also. I mean so --
 20 Q Yes, but --
 21 A And, and --
 22 Q Let me ask you this then. Did you know that Jim Colacino
 23 had two companies, or did, were you under the impression that
 24 Jim Colacino had two companies before he signed any letters of
 25 assent?

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1 Q -- he's going to sign up one of them.
 2 A -- I did not say that (a) one could remain this or one
 3 could remain that, that discussion never took place, so that's
 4 why I guess I'm having the issue of answering that. I didn't
 5 have that discussion.
 6 Q Well, you knew, you testified you knew he had two
 7 companies.
 8 A Yeah.
 9 Q And on February 24 of 2011 he signed one of them up
 10 according --
 11 A Yep.
 12 Q -- to you?
 13 A Right.
 14 Q And you believe that company to be Newark Electric Corp.
 15 A That's correct.
 16 Q So, at that point in time you didn't have any problem with
 17 him having a Union company and a non-union company.
 18 A Correct.
 19 Q Okay. So, he could, he could use the, he could use one
 20 company under your, without violating the jurisdiction, and the
 21 NDCA's or anything like that. He could use the one company
 22 Newark Electric as a trial for the Union, right, and keep the
 23 other one separate?
 24 A Could he do that? Until he did electrical work with that
 25 other company, correct. But once he did bargaining unit work,

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1 A Yes.
 2 Q So, you believed him to be the owner of Newark Electric,
 3 correct?
 4 A Uh-huh.
 5 Q And you believed him to be the owner of Colacino
 6 Industries, correct?
 7 A Yes.
 8 Q So, he owns two companies.
 9 A Correct.
 10 Q Both of which before signing any letters of assent are
 11 non-union companies, correct?
 12 A Correct.
 13 Q Both companies can do work that's in your jurisdiction but
 14 there's no violation because they're non-union, they haven't
 15 signed anything correct?
 16 A Correct.
 17 Q Now, he, Mr. Colacino says I'm willing to try the Union
 18 out, but I'm only willing to sign up one company correct?
 19 A He said he would sign the letter of assent.
 20 Q But you knew he had two companies, right?
 21 A Uh-huh.
 22 Q You just testified to that.
 23 A Right.
 24 Q So, he's going to, he's telling you --
 25 A Well, you're telling me that --

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1 incorrect
 2 Q And did you ever tell Mr. Colacino that?
 3 A Yes, I told him he would not be allowed to be double-
 4 breasted on many occasions.
 5 Q Do you have any documents that support that?
 6 A No, I do not.
 7 Q So, these are just conversations that you --
 8 A Yes, it is --
 9 Q -- say you had with --
 10 A -- conversations.
 11 Q Okay. Now, did you, towards either the end of June or
 12 early July of 2011, prior to the time he signed up Colacino
 13 Industries in a letter of assent did you have discussions with
 14 Mr. Colacino about, you know, the business model with this
 15 Newark Electric not working out?
 16 A No.
 17 Q Did you, were you aware that he was going to stop using or
 18 doing any work through Newark Electric?
 19 A No.
 20 Q Did you know that he was signing up Colacino Electric, or
 21 Colacino Industries in order to bring the employees and all the
 22 work back to that entity?
 23 A When we sat down and discussed that, it was because their
 24 bookkeeper had an issue with the way the books were being kept.
 25 And he wanted to bring everything under one fold so it would be

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1 easier on the bookkeeper. It was a bookkeeping function is the
 2 way I understood it, and that's why I had no problem with it,
 3 and that's why I went to the international and asked them if
 4 they would have a problem with it.
 5 Q And why would the international have a problem with it?
 6 A I don't know, but as I said before a letter of assent C is
 7 only extended once. And I wanted to make sure that it could be
 8 allowed for this instance for his bookkeeping possibilities.
 9 Q And did you get any response back from the international?
 10 A Yeah, I got a verbal okay on it. It was just a verbal
 11 okay, yeah, go ahead and let them do it.
 12 Q None of this was in writing. None of the request were in
 13 writing?
 14 A No, it was not.
 15 Q Okay. So, once Mr. Colacino signs up Colacino Industries
 16 in July of '11, were you, did you become aware that he wasn't
 17 using Newark Electric anymore for anything?
 18 A No.
 19 Q Did you get any reports, any payroll reports with Newark
 20 Electric on them do you recall?
 21 A I don't look at the reports. I look at, first of all I
 22 spot check them if I'm asked, other than that all I check for is
 23 if proper benefits have been paid. It's not unheard of for
 24 contractors to use a different name at any given time. I check
 25 for benefits, make sure that ours are proper, make sure that the

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1 that. At the time Colacino Industries was signed up, July 20,
 2 2011, right, they signed a letter of assent C, then, right.
 3 Now, at that point in time Newark Electric could not rescind its
 4 letter of assent because it's still in the first 180 days, is
 5 that correct?
 6 A Correct.
 7 Q So, if Mr. Colacino --
 8 A Let me do the math. I can't, I don't want to say correct
 9 and not, so, February, yeah, it was still in the first 180 days.
 10 Q Yes. So, the earliest he could have done it would be
 11 sometime in August, maybe September?
 12 A Yes.
 13 Q So, at that point in time he wasn't able to rescind the
 14 Newark Electric letter of assent.
 15 A Neither one of us were able to.
 16 Q You're saying you didn't have the power to alter that
 17 document at all?
 18 A It says so on the document.
 19 Q Okay.
 20 A It says neither party for first 180 days.
 21 Q When was the first time that you ever told Mr. Colacino
 22 that you considered him to still be a Union Employer under the
 23 letter of assent for Newark Electric?
 24 A Him, personally?
 25 Q Yes.

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1 benefits are paid.
 2 Q I And the issue of re-dating the Newark Electric letter of
 3 assent was that ever discussed?
 4 A The time it was discussed was what I testified on the July
 5 2nd meeting. That was Jim's belief and I told him that was
 6 never my belief.
 7 Q July 2nd of what year?
 8 A July 2nd of 2012.
 9 Q So, you're saying at the time, back in July of 2011, I'm
 10 going back a year earlier.
 11 A Okay.
 12 Q So, you're saying back in that time period before you
 13 signed the second company out there was no discussion about re-
 14 dating?
 15 A No.
 16 Q You didn't tell him that you would re-date the other
 17 letter of assent?
 18 A No, I did not. Nope.
 19 Q So, in essence at the time you're saying that the Union
 20 had two different letter of assent C's with the same owner,
 21 company, same Employer and that was okay?
 22 A It was a bookkeeping function that's the way I was
 23 explained to it, to my international that's why we did it. We
 24 did it strictly to make his life easier.
 25 Q Now, at the time Newark Electric, excuse me, withdraw

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1 A July 2nd, the first time I saw him in person.
 2 Q When was the first time you communicated that message back
 3 to him through anybody else or tried to?
 4 A Tried to, I tried many times to do it prior but on the
 5 June 29th, when the two ladies showed up at my office, I
 6 communicated with them to make sure that they told him that.
 7 Q Now, if the -- and let me just show you this General
 8 Counsel 'S, it's this one here for Newark Electric.
 9 A I got it right here.
 10 Q Hypothetically speaking if there was a finding that the
 11 letter of assent C for Newark Electric had been re-dated to July
 12 20 of 2011, would you still have issue with this termination
 13 letter?
 14 MS. SELLERS: Can I object on the grounds it's a
 15 hypothetical question?
 16 JUDGE CHU: I'll allow it. Can you answer that question?
 17 THE WITNESS: Can I answer that question? Well, if you go
 18 by the documents it says in compliance with 72011 in the, in
 19 the, if you go to the letter of assent C, it says after the
 20 first 12 months from the tentative date this letter of assent
 21 unsigned shall bound, first 180 days, it says the local Union at
 22 least 30 days prior to the selected termination, so no, because
 23 it's not 30 days prior.
 24 BY MR. TREVETT:
 25 Q Other than the objection being 30 days prior would you

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1 have had any other objection if that letter of assent C had been
 2 re-dated?
 3 A If, if the letter of assent, I mean, you're trying, then
 4 there's nothing in, I mean that's part of the document. Why
 5 would I not have that in there? I guess is the, it was not 30
 6 days prior like it was supposed to be.
 7 Q That's your only, that would have been your only objection
 8 in my hypothetical.
 9 A Let me look at that real quick. I got six or seven letter
 10 of assent C's in front of me. I would object to it still.
 11 Q Why is that, sir?
 12 A It was signed on July 20, 2011. Wait a minute, let me see
 13 the date. This is June 29th, so, no, I would, no, I guess I
 14 wouldn't have.
 15 Q So, the whole issue here is it boils down I think we
 16 talked about this is whether or not there was a re-dating of
 17 that Newark Electric from your perspective. You say no and
 18 therefore none of this is, this letter is not valid. Am I
 19 summarizing that fairly and correctly?
 20 A Yeah.
 21 Q Mr. Blondell, I'm just going to kind of switch gears and
 22 talk a little bit about Mr. Blondell.
 23 A Okay.
 24 Q Is he currently a member of Local 840?
 25 A Yes, he is.

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1 Q What is his status?
 2 A He is a member but he's not working for the local.
 3 Q Do you how long has he been in that status?
 4 A I believe since March.
 5 Q March of?
 6 A This year.
 7 Q This year 2013, okay.
 8 A Uh-huh.
 9 Q And prior to that was he working --
 10 A Yeah, he worked on --
 11 Q -- through the local?
 12 A Yeah, he worked off and on.
 13 Q All right. Now, do you know whether he's done any work
 14 outside of the Union?
 15 MS. SELLERS: Objection relevance.
 16 MR. TREVETT: Well, one of the things it goes to, quite
 17 frankly, Judge, is if there's a finding there would be some sort
 18 of a monetary remedy and so I think it would go to that.
 19 MS. SELLERS: That's what a compliance hearing is.
 20 JUDGE CHU: Yes, I don't want to, I don't usually go into
 21 the compliance issues.
 22 MS. SELLERS: Okay.
 23 JUDGE CHU: At this time, okay.
 24 MR. TREVETT: Fair enough. Judge, may I maybe just a
 25 couple of minutes with my client?

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1 JUDGE CHU: That's fine.
 2 MR. TREVETT: Thank you, sir.
 3 JUDGE CHU: Off the record. Please come back at 10 of
 4 four.
 5 (Whereupon, a brief recess was taken)
 6 JUDGE CHU: Back on the record. During the short recess
 7 Acting General Counsel submitted General Counsel Exhibit 1, and
 8 there's an index and cover sheet, so I don't need to repeat each
 9 of the subsections. Any objections to the admission of GC-1?
 10 MR. TREVETT: No objection, Your Honor.
 11 JUDGE CHU: All right, thank you. Moved and entered into
 12 the record.
 13 (General Counsel Exhibit 1 received)
 14 JUDGE CHU: Let's continue with the cross examination of
 15 Mr. Davis.
 16 BY MR. TREVETT:
 17 Q Could you show the witness General Counsel One, please.
 18 A I got it.
 19 Q Let's flip you over to the last page, do you see that?
 20 A Uh-huh.
 21 Q The original, the first original charge in this matter,
 22 okay. Now, this is filled out by your attorney Mr. Oliver, is
 23 that correct?
 24 A Correct.
 25 Q Did you have any discussions or input into this charge?

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1 A I explained to them what happened and he drew up the
 2 charges.
 3 Q Okay. So, if I look under number two it says, the first
 4 paragraph says, "the Employer has violated Section 8(a)(1) and
 5 (3) of the Act by on or about June 29, 2012, terminating the
 6 employment of Anthony Blondell because of his protected
 7 concerted activity, and because his membership was part of IBEW
 8 Local 840", do you see that?
 9 A Yes.
 10 Q And that was based on information you provided to Mr.
 11 Oliver?
 12 A Yes.
 13 Q Now, if you look at 1(c), which is two pages forward on
 14 that, do you see that, it's like the third from the end, it's
 15 the amended charge?
 16 A Okay.
 17 Q Do you see the documents there?
 18 A Yeah.
 19 Q And so that the, the part of the first, the original
 20 charge that I just read to you is not a part of this charge is
 21 that correct, the termination of Mr. Blondell?
 22 A Correct.
 23 Q So, is it the Union would agree then that his termination
 24 or that original termination was not a discriminatory act?
 25 A I guess I'd have to have that explained to me again. You

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1 mean the last page.
 2 Q The original charge you had alleged his termination on
 3 January, excuse me, June 29th as a --
 4 A When, when --
 5 Q -- discriminatory act, an illegal act, right?
 6 A Right.
 7 Q Now, you amend the charge. And the amended charge on
 8 October doesn't have that allegation. You've taken that
 9 allegation out correct?
 10 A Well, it says differently laying off constructively
 11 discharging because of employee plan to work.
 12 Q Right, but you don't, but you've eliminated the part about
 13 the termination on June 29th, correct?
 14 A Correct.
 15 Q So, is it fair to say then that the June 29th termination
 16 is not in the Union's mind as a discriminatory act because you
 17 took it out.
 18 A Right.
 19 Q Okay, that's all I had.
 20 A Yeah, no, that's --
 21 MR. TREVETT: No further questions.
 22 THE WITNESS: I'm trying to -- too many dates. It's hard
 23 to keep the dates right.
 24 JUDGE CHU: Redirect, please.
 25 MS. SELLERS: Pardon?

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1 THE WITNESS: Now, that I, yeah, it's Newark Electric 2.0,
 2 I've got a letter of assent with Newark Electric Newark 2.0.
 3 BY MS. SELLERS:
 4 Q In order to terminate a letter of assent does the company
 5 have to just provide the local with notice or do they also have
 6 to provide MECA with notice?
 7 A No, it says here in the letter of assent C you have to
 8 provide MECA also.
 9 Q Okay. So, if Mr. Colacino failed to provide MECA with
 10 notice in this case would that also be a reason why it would --
 11 A Yes, that would also, yeah, that would also be a reason.
 12 Q Going back to the original charge, which is the last page,
 13 it's on Exhibit 1(a).
 14 A Yes.
 15 Q The termination of Mr. Blondell on June 29th?
 16 A Yes.
 17 Q You originally testified that you did not file a grievance
 18 over that, why not?
 19 A Because he was reinstated.
 20 Q So, would you consider a person who was terminated and
 21 then reinstated to have been discriminated against?
 22 A Well, yes.
 23 Q Okay. Would you file a charge or a grievance over it?
 24 A No.
 25 MS. SELLERS: I have no further questions at this time. I

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1 JUDGE CHU: He said no further questions.
 2 MS. SELLERS: Oh, sorry.
 3 MR. TREVETT: Yes, I'm sorry, no further questions at
 4 this time.
 5 **REDIRECT EXAMINATION**
 6 BY MS. SELLERS:
 7 Q Mr. Davis, can you find General Counsel's Exhibit 13, the
 8 June 29th --
 9 A Yeah, it's right in front of me.
 10 Q Okay. On there could you just read that to yourself real
 11 quick?
 12 A Yes.
 13 Q So, you were asked if you had any other objections about
 14 this termination of a letter of assent. Did you have a letter
 15 of assent with Newark Electric 2.0?
 16 A No.
 17 Q So, would this letter terminate your letter of assent with
 18 Newark Electric?
 19 MR. TREVETT: Objection, calls for a legal conclusion.
 20 MS. SELLERS: You asked if he had any objections. You
 21 asked that same exact question.
 22 JUDGE CHU: I'll allow it. This is a lay person's
 23 opinion.
 24 THE WITNESS: So, does that mean I can answer?
 25 JUDGE CHU: Yes.

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1 have --
 2 JUDGE CHU: Well, wait, let's see if there's any recross.
 3 MR. TREVETT: Oh, sorry, Judge, there's no way to play
 4 that back is there? I'm sorry. The last flurry came so fast
 5 that I'm not sure I understood it. And if I could hear it again
 6 I wouldn't have to ask any silly questions.
 7 JUDGE CHU: Well, all right. Can you read it back?
 8 **(Whereupon, a brief recess was taken)**
 9 JUDGE CHU: Any recross, counselor?
 10 **RECROSS EXAMINATION**
 11 BY MR. TREVETT:
 12 Q We'll, if I understood that in listening to it your
 13 testimony was that you would consider somebody who had been
 14 terminated and reinstated to have been discriminated against,
 15 correct?
 16 A Yes.
 17 Q And why, I'll ask the question again, why was that
 18 allegation withdrawn from the amended charge?
 19 A Quite honestly I don't know.
 20 Q Okay.
 21 A I, the, the, did, I considered the issue fixed from the
 22 discrimination because he was given his job back, so.
 23 Q So, effectively there was no discrimination.
 24 A Well, I wouldn't say that. I would say that there was, he
 25 was made whole so there was no reason to pursue it.

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1 Q. Okay. I think we have your testimony, thank you.
 2 JUDGE CHU: Thank you. There's no other questions for
 3 this witness at this time. Ms. Sellers, you were about to say
 4 something?
 5 MS. SELLERS: Yes, I just need to reserve the right to
 6 recall him. Respondent provided us with 20 boxes of subpoenaed
 7 documents. And I was not surprised that we were unable to get
 8 through them in the two hours. They, they're a lot of
 9 documents, many that go beyond the dates of what we requested.
 10 So, I may need to recall this witness depending on my findings
 11 of going through those.
 12 JUDGE CHU: Well, I'll entertain a motion when you make a
 13 fully recall. I would just say for the record that, you know,
 14 if you anticipate a sense of documentation, the subpoena that
 15 are pursuant that you did, in my opinion I would have done it
 16 sooner rather than later. But be it as it may you can make that
 17 motion if you deem it necessary after your review of the
 18 subpoenaed documents if you need to recall this witness, all
 19 right?
 20 MS. SELLERS: Fine.
 21 JUDGE CHU: Mr. Davis, you're excused as a witness at this
 22 time. You may be subject to recall. Please do not discuss your
 23 testimony with anybody other than your legal counsel, all right?
 24 THE WITNESS: Do I take all this with me?
 25 MS. SELLERS: No, you don't.

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1 Q. How long have you been a member of Local 840?
 2 A. Approximately 28 years.
 3 Q. What's your classification as an electrician?
 4 A. Journeyman wireman.
 5 Q. Do you know James or Jim Colacino?
 6 A. Yes.
 7 Q. How do you know him?
 8 A. I work for him.
 9 Q. When was the first time you worked for Mr. Colacino?
 10 A. I started there in November 2006.
 11 Q. And how long did you work there?
 12 A. Approximately four months.
 13 Q. And what was your position there?
 14 A. I was just sent there by the Union to help them out, just
 15 to as a extra hand.
 16 Q. And what about the next time?
 17 A. The next time I worked for him as a subcontractor from
 18 around May of 2007 through November 2011, maybe, somewhere
 19 around there, 2010, I'm not sure.
 20 Q. And did you work for him any other time?
 21 A. Yes, I worked for him again when he became a signatory
 22 contractor with the Local Union, maybe March 2011 through July
 23 of 2012.
 24 Q. The last time you worked from March 2011 to July 2012,
 25 which of these companies did you work for?

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1 JUDGE CHU: No, leave it.
 2 THE WITNESS: Okay.
 3 JUDGE CHU: Thank you.
 4 (Witness excused)
 5 JUDGE CHU: Off the record, please.
 6 (Whereupon, a brief recess was taken)
 7 JUDGE CHU: Back on the record. Ready to proceed with the
 8 next witness? You're Mr. Blondell?
 9 THE WITNESS: Yes.
 10 JUDGE CHU: Can you come up to the witness seat, raise
 11 your right hand.
 12 Whereupon,
 13 ANTHONY BLONDELL
 14 Having been first duly sworn, was called as a witness and
 15 testified as follows:
 16 JUDGE CHU: Have a seat, please. State for the record
 17 your full name.
 18 THE WITNESS: Anthony J. Blondell.
 19 JUDGE CHU: Thank you. Ms. Sellers, your witness.
 20 DIRECT EXAMINATION
 21 BY MS. SELLERS:
 22 Q. Mr. Blondell, are you member of the Union?
 23 A. Yes, I am.
 24 Q. What Union are you a member of?
 25 A. The IBEW Local 840.

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1 A. I started off as from what I recall Newark Electric 2.0
 2 because that was on my paycheck.
 3 Q. And did that come, did, at some point that changed?
 4 A. Yeah, maybe a few months later I noticed my paycheck said
 5 Colacino Industries.
 6 Q. Mr. Blondell, can you please tell us what General
 7 Counsel's Exhibit 20 is?
 8 (General Counsel Exhibit 20 identified)
 9 A. It looks like copies of paste ups made out to me.
 10 Q. Is this how you were aware of what company you were
 11 working for?
 12 A. Yeah, I guess so. When I first started I was Newark
 13 Electric 2.0.
 14 Q. Did you ever find out any other way that you had started
 15 to work for Colacino Industries?
 16 A. I think I just when I noticed on my, the paycheck was
 17 different. The year and the date was different one time. I
 18 think I inquired with Cory Brink at the time, and she had just
 19 mentioned that they were doing something new now and everything
 20 is going to be the same.
 21 Q. So, when you started out working for Mr. Colacino at
 22 Newark Electric 2.0, and then when you were terminated you were
 23 working for Colacino Industries was there any transfer process
 24 that took place?
 25 A. What do you mean by transfer?

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1 Q Did you have to bid on a job or fill out any paperwork for
2 a process to switch companies?
3 A No, I didn't.
4 Q In your paste ups indicating that you worked for Newark
5 Electric 2.0 what were your job duties?
6 A I was just doing electrical for him.
7 Q And then when it switched to your paste ups that you
8 worked for Colacino Industries did your job duties change?
9 A No. I really pretty much stayed the same, nothing out of
10 the ordinary.
11 Q I'd like to turn your attention to June 29, 2012.
12 A Uh-huh.
13 Q Can you tell us what happened that day?
14 A Yeah, I was terminated.
15 Q How did that come about?
16 A Well, I, when I collected my paycheck around 3:30, at the
17 shop, there was a letter saying I was terminated due to
18 disclosing company information, maybe, something like that.
19 Q So, General Counsel's Exhibit 21, is this the letter you
20 received in your paycheck?
21 (General Counsel Exhibit 21 identified)
22 A Yes, it is.
23 Q And it says you were terminated for disclosing company
24 information without consent, correct?
25 A Correct.

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1 Q And what happened then?
2 A We started off I just expressed that I was hurt by the
3 fact that he actually terminated me like this, with a letter,
4 and that I wish he would have come to me and, you know, if
5 something had happened, somebody could have asked me.
6 The bottom line I guess by the time we were done he had
7 just said he had some misstated information. I was collateral
8 damage. And he offered to rescind the letter, apologized, I
9 accepted.
10 Q Did he explain why he believed you to be the one that had
11 taken that piece of paper?
12 A No, I don't believe it was after that. I don't know if
13 the paper was on the desk, that's just what he thought, and
14 that's what somebody told him. I don't know anything about a
15 piece of paper on his desk.
16 Q During the meeting did you have any conversations about
17 anything else?
18 A On the meeting of?
19 Q On June 30th.
20 A June 30th, actually it was, we were there probably a couple
21 of hours. We talked about how he could make, trying, he was
22 trying to make things work with Mike Davis, the Union side of
23 the company, trying to go over the, what's the paper, you know.
24 Q The letter of assent?
25 A Letter of assent, yes.

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1 Q Were you aware at that time what information you had
2 disclosed without the company's consent?
3 A No, I wasn't.
4 Q What did you do when you received this letter?
5 A Well, I tried to call Jim and he didn't answer. I would
6 try repeatedly. I had the office try to call him. He didn't
7 answer. So, I tried to get out of the office manager Vicky
8 Bliss to try to find out what it was. And she had stated that I
9 took a piece of paper off his desk and brought it to the, I
10 guess Mike Davis. And I of course denied because I hadn't been
11 in there.
12 I actually asked them to go through their video tape
13 because he has video cameras in his office to view it, and show
14 me where it was. I never, haven't been in his office. I did
15 not do that. And Vicky's comment to me after a while was well,
16 somebody did it. And I said so I got fired because somebody did
17 it. And pretty much it stopped there, I didn't continue too
18 much there. I, later in the evening I did get a hold of Jim and
19 we met the following morning.
20 Q And where did you meet?
21 A At his office.
22 Q And what time was it?
23 A At 8:00.
24 Q So, that's on June 30th?
25 A Yes.

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1 Q So, he was he was trying to work on the Union's side. Did
2 he --
3 A Right, he was just, he was trying to resolve the letter
4 and the dates. And he had actually, he had reached back and
5 there was a letter on the credenza that was this date, July
6 29th. I don't know if it was a prior year because that's when
7 he signed it or signed a letter. We did refer to that a couple
8 of times, and July 20th became a date that we thought was a last
9 day of ending a Union contractor.
10 Q Was it just Mr. Colacino present and you during this
11 meeting or was somebody else there?
12 A Actually it was just us for maybe about an hour, and then
13 Scott Barra entered the room.
14 Q And who is Scott Barra?
15 A Scott Barra was another employee, a Union electrician.
16 Q And what happened when Mr. Barra joined the meeting, was
17 he part of this conversation about the July 20th date?
18 A Yeah, I mean I guess a lot of things were discussed where
19 just everybody I think was trying to hash out, you know, how
20 things are. I think Jim was trying to explain what it was he
21 was looking for, or what he needs for his business to operate
22 with a Union or without a Union. I think Scott was just there
23 to try to see what was going on himself.
24 I guess a lot of things were probably happening because we
25 didn't know what -- I keep referring back -- but July 20th to

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1 me that was a date that I just kept thinking about wondering if
2 that was, you know, like a last date for me anyway, the time I
3 was there because of the termination. So, by the time Scott was
4 there I believe we had, Jim had already made an offer to rescind
5 the, the termination note, so that was taken care.

6 So, really when Scott was there, I think it was more or
7 less just talking about the Union or non-union type options that
8 Jim was going to have to go for.

9 Q Did Mr. Colacino explain what would happen on July, to you
10 on July 20th if he did not stay Union?

11 MR. TREVETT: Objection, leading. We're getting to the
12 hub of the issue here, and I really would like just not so many
13 leading questions.

14 JUDGE CHU: The question is what else did they discuss?

15 MS. SELLERS: Yes.

16 MR. TREVETT: Right.

17 BY MS. SELLERS:

18 Q What else was discussed during that meeting?

19 A I don't think we ever really brought up what would happen
20 on July 20th. I don't recall any of that. Pretty much what we
21 discussed which led into Scott Barra actually made a call to
22 Mike Davis to try to setup a meeting for the following Monday or
23 Tuesday. I don't recall which day it was, to get together with
24 Jim in his office and try to work out what details needed to be
25 worked out.

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1 Q Okay.

2 A I think we had probably an hour meeting there.

3 Q Did they come to any agreements during that meeting that
4 you remember?

5 A No, but they talked about a lot of different scenarios.
6 And Jim talked about the kind of people he would look for, he
7 wanted to work for him because of this specialty in his
8 business.

9 Q Can you elaborate?

10 A Jim is does more of the technical side of the business.
11 So, some of them manpower he needs, he needs people that are
12 maybe more qualified to a point, or at least can understand, or
13 at least get somebody in there that you can train them on, and
14 then, you know, so they understand how his business works.

15 Q And how did Mr. Davis respond to that?

16 A He just said that, you know, we have people available, and
17 we can work people into the system.

18 Q Was your termination discussed at that meeting?

19 A From what I remember just briefly. I think we all, we
20 touched it on it briefly just to say that me and Jim had worked
21 it out and it was a misunderstanding. And I thought that's
22 where it was left at that point. Jim was going to have a letter
23 rescinding the initial letter which he did. And I followed up
24 with him and everything.

25 Q Did you receive that letter?

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1 Q Did that meeting, did you attend that meeting?

2 A Yes, I did.

3 Q And did anything happen?

4 A Yes, it did.

5 Q And who was present?

6 A Jim Colacino, Mike Davis, myself, Doug Geary, and I'm sure
7 Scott Barra was there, too, I'm pretty sure he was.

8 Q And where was the meeting?

9 A It was in Jim's office.

10 Q And where is Jim's office?

11 A Uh...

12 Q First, where is the physical location, what's the address?

13 A Harrison Street in Newark.

14 Q And who spoke during this meeting?

15 A Well, I think a little bit of everybody. More of the
16 conversation was between Mike and Jim, everybody kind of
17 listening in, maybe throwing a little input once in a while. I
18 don't believe there was a lot of input from Doug, Scott or
19 myself. I think it was more Jim and Mike trying to discuss the
20 letter of assent.

21 Q What did the discuss about the letter of assent?

22 A Well, they discussed a lot of things. I mean I don't
23 remember exactly everything but I know they were going actually
24 try to get another date, then two together, to try to go over
25 them more.

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1 A Yes, I did.

2 Q When did you receive that letter?

3 A I'm going to say the week of, the first week of July,
4 maybe later in the week, Thursday or Friday.

5 Q Is this General Counsel's Exhibit 22 is this the letter
6 you received?

7 (General Counsel Exhibit 22 identified)

8 A Yes, it is.

9 Q And did you return for work after receiving this letter?

10 A Yes, I returned it would have been the following Monday.
11 I believe this was a Thursday or Friday and I returned to work
12 on Monday after that.

13 MS. SELLERS: I'd like to offer General Counsel's 20, 21,
14 and 22.

15 MR. TREVETT: No objection.

16 JUDGE CHU: Thank you. Mark it and admit it into the
17 record.

18 (General Counsel Exhibits 20, 21, 22 identified and received)

19 BY MS. SELLERS:

20 Q After you returned to work did you have any conversations
21 with your co-workers about the Union?

22 A No, it was pretty quiet. The only co-worker really would
23 have been Scott Barra. We didn't really say too much to each
24 other.

25 Q Did you have any further conversations with Mr. Colacino

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1 about the meeting?

2 A I don't believe we talked a lot about it, I mean little

3 bits, you know. We already had the meeting with Mike, maybe

4 stuff like that. I did at one point I would say July 17th, July

5 18th, I did mention to him if it was his intention or if he had

6 planned to lay me off on the 20th because that was the last day

7 of the letter.

8 Q So, how did that happen, who approached who?

9 A I approached him.

10 Q And what did you ask him?

11 A I asked him if it was his intention to lay me off on the

12 20th.

13 Q And why did you ask him about whether or not he was going

14 to lay you off on the 20th?

15 A I guess - just wanted to know what was going on with my

16 employment.

17 Q Why, what were you, what were your concerns?

18 A What was my concern?

19 Q Yes.

20 A I guess I just wanted to know. I guess it was a one or

21 two weeks, or I didn't know if I was going to be working there

22 anymore because there wasn't any new contractor, or if I was

23 going to have to get laid off and go back to the Union Hall and

24 sign the book.

25 Q And what did Mr. Colacino say when you asked him?

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1 A He said, yeah, that's probably what's going to happen.

2 And because I'm assuming at that point there was no deal made

3 with Mike Davis or the local Union, so.

4 Q So, he said yeah, that's probably what's going to happen,

5 and how did you respond?

6 A Well, I just accepted it because it was, I mean I was a

7 Union employee, and if he was going non-union, there wasn't any

8 way I could work for him.

9 Q Then what happened on July 20th?

10 A I received my, like I was paid up for the week prior and

11 the week of, I received a letter, layoff letter from Jim. And I

12 think I also received another letter that had their federal ID

13 number, because I think I asked for. I didn't know what I

14 needed for unemployment, so really I needed something that's,

15 maybe their federal Employer number because I didn't know if I

16 needed that for unemployment.

17 Q I've handed you General Counsel Exhibit 23, can you

18 identify this document?

19 (General Counsel Exhibit 23 identified)

20 A It's a letter that I received in my, I believe it was in

21 my paycheck.

22 Q And in this letter it says that you're being laid off for

23 lack of work. Was the job you were working on at the time you

24 received this letter finished?

25 A No.

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1 JUDGE CHU: I'm sorry, I didn't hear you.

2 THE WITNESS: No.

3 JUDGE CHU: Thank you.

4 BY MS. SELLERS:

5 Q To the best of your knowledge was there work for you to be

6 still doing there?

7 A Was there still work for me?

8 Q Yes.

9 A Yes, I believe so.

10 Q When was the last time you had been laid off by Mr.

11 Colacino?

12 JUDGE CHU: What was the project that you were working on?

13 THE WITNESS: There's multiple projects. We at the time

14 we were working for Farmington Wastewater Facility at a Gypsum

15 Mills site, a pump station system. And I was actually working

16 there with Scott Barra.

17 BY MS. SELLERS:

18 Q Was Mr. Barra laid off at that time?

19 A No.

20 Q Did Mr. Barra, do you know why Mr. Barra was not, why Mr.

21 Barra was not laid off when you were more senior than him?

22 A I guess, well, no, I don't. I can explain why I think.

23 Q Did you have any conversations with Mr. Barra about your

24 layoff?

25 A No, I don't believe so. I mean I think we knew it was

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1 coming.

2 Q Was Mr. Barra concerned he was going to be laid off?

3 A No.

4 Q Why not if he told you?

5 A Well, I'm assuming it's because Scott was no longer in the

6 Union. I think he was doing another arrangement with Jim

7 Colacino.

8 JUDGE CHU: Is that what you believe or was that they told

9 you?

10 THE WITNESS: That's, I'm assuming that's what happened

11 because he dropped out of the Union.

12 JUDGE CHU: But you don't know why.

13 BY MS. SELLERS:

14 Q Did Mr. Barra or Mr. Colacino ever tell you that?

15 A Scott told me he did. I guess I was, what, what's the

16 initial question I guess? I'm sorry.

17 Q Did Mr. Barra tell you why he was not afraid of being laid

18 off?

19 A No, no.

20 Q Are you aware who the owner is of Newark Electric?

21 A Yes.

22 Q How?

23 A I work for him.

24 Q And who is the owner of Newark Electric?

25 A Jim Colacino.

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1 Q Are you aware who the owner is of Newark Electric 2.0?

2 A Yeah, yes.

3 Q And how do you know that?

4 A Because I work for him.

5 Q And who is that?

6 A Jim Colacino.

7 Q And are you aware who the owner is of Colacino Industries?

8 A Yes.

9 Q And who is that?

10 A Jim Colacino.

11 Q And do you know that because?

12 A I work for him.

13 MS. SELLERS: Before I move on further I'd like to offer

14 General Counsel Exhibit 22.

15 MR. TREVVETT: No objection.

16 JUDGE CHU: Thank you. Mark it and admit it.

17 (General Counsel Exhibit 23 received)

18 BY MS. SELLERS:

19 Q Do you know where Newark Electric is located?

20 A Yes.

21 Q Where is it located?

22 A Harrison Street in Newark.

23 Q What about Newark Electric 2.0?

24 A It would be the same building.

25 Q And Colacino Industries?

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1 A The same building.

2 Q Have you visited that facility?

3 A Yes, I show up there every morning for work.

4 Q And can you please describe the office that houses all

5 three?

6 A There's a hallway that goes around with offices to the

7 left, and there's offices to the right. And at least on the

8 upper part, where Jim's office is, a conference room and a parts

9 warehouse, material warehouse.

10 Q Now, that front door what is anything, is it glass, is it

11 wooded, is it, I don't know what else it would be, glass or

12 wood?

13 A The outer doors are glass doors.

14 Q Is there anything on those doors indicating the name of

15 the companies in there?

16 A Yes, I believe they're stenciled in.

17 Q And the last time you were there what were the name of the

18 companies on the door?

19 A I'm just guessing but I'm, I'm pretty sure they were both

20 on there, Colacino Industries and Newark Electric on the door.

21 Q Now, when you go into the offices is there any indication

22 of which offices belong to Newark Electric employees, and which

23 offices belong to Newark Electric 2.0 employees, and which

24 offices belong to Colacino Industries?

25 A No.

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1 Q What about the equipment in the office, how many

2 photocopiers are there?

3 A The main, front where you have to make a main copier,

4 printer, fax machine unit.

5 Q And how many, are there other copiers?

6 A I think Jim had one in his office, and I don't know if

7 Vicky had one in her office, maybe.

8 Q When you've been at the office has the phone ever rung?

9 A Phone ever rung?

10 Q Yes, have you ever answered it?

11 A I probably answered it a couple of times.

12 Q What did you say when you answered the phone?

13 A Hello, Newark Electric.

14 Q Have you ever, is there a display on the phone?

15 A It had caller ID, but I think the people's names and

16 numbers would pop up.

17 Q And does it show the number of the caller or the number of

18 the company?

19 A I would say caller ID I think shows the person calling in.

20 I don't, I remember looking at it and seeing you can tell who

21 was calling.

22 Q Are you familiar with Respondent's vehicles?

23 A Yes.

24 Q And can you please describe, well, how are are you

25 familiar with those vehicles?

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1 A Well, they're all parked out in front of his building and

2 each employee had one to drive while we worked there.

3 Q So, did you drive one of those vehicles while you worked

4 for Mr. Colacino?

5 A Yes, yes.

6 Q And could you please describe what the vehicles looked

7 like?

8 A Yeah, they were all white vans with lettering down the

9 side, banner Newark Electric.

10 Q Did they say Colacino Industries anywhere on them?

11 A No.

12 Q Did they say Newark Electric 2.0 anywhere on them?

13 A No.

14 Q I'm going to show you what's been admitted as General

15 Counsel's Exhibit 19, the photograph of a van.

16 A Yes.

17 Q Is that the van you just described?

18 A Yes, that's the vans that I think they're all like this.

19 Q When you switched from working for Newark Electric 2.0 to

20 working for Colacino Industries were you assigned a new vehicle?

21 A No.

22 Q Who provided those materials for the jobs you worked on?

23 A They have a warehouse with materials in it, so if you had

24 a project to do you could go up there and get parts and

25 materials you needed.

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1 Q And were the materials for jobs done by Colacino
2 Industries in a separate area of the warehouse than for jobs
3 done by Newark Electric or Newark Electric 2.0?
4 A No, there's just one, one warehouse for all the parts.
5 Q Do you know Vicky Bliss?
6 A Yes.
7 Q How do you know her?
8 A She was the office manager.
9 Q And do you know who Ms. Bliss worked for?
10 A Colacino Industries.
11 Q And do you know Jessica Velle?
12 A Yes.
13 Q And how do you know Ms. Velle?
14 A She also worked there as secretary.
15 Q And who did Ms. Velle work for?
16 A I would assume the same, Colacino Industries.
17 Q And did you know Cory Brink?
18 A Yes.
19 Q And how did you know her?
20 A She was office manager prior to Vicky Bliss.
21 Q And what company did she work for?
22 A Colacino Industries.
23 Q Now, you testified earlier that when you noticed the
24 change in company name on your pay stubs you asked about it and
25 were told it, were you told that you needed to change anything

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1 that you were doing?
2 A No.
3 Q Did you have any paperwork that you filled out differently
4 after, before or after, you know, switching the names of the
5 company?
6 A No.
7 Q Can you, well, other than your pay stubs was there any
8 other way you could identify which of Mr. Colacino's companies
9 you were working for?
10 A No, I guess not. I just thought it was a paper thing at
11 the office, bookkeeping.
12 Q Did you have a weekly time sheet?
13 A Yes, we kept weekly time sheets.
14 Q Who filled out the weekly time sheet?
15 A We filled our own at the end of each day.
16 Q Do you recognize what's been marked as General Counsel's
17 Exhibit 24?
18 (General Counsel Exhibit 24 identified)
19 A Yes.
20 Q And what is it?
21 A This is a copy of the, some of my weekly time sheets
22 around June.
23 Q June of 2011?
24 A Yes.
25 Q And then what company names appear on the time sheets?

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1 A Newark Electric Corporation and Colacino Industries.
2 Q And have you had a job card that you would fill out for,
3 when you went and worked on a site?
4 A Yes, we have a card that we fill out for material for that
5 particular job that day.
6 Q And did that card identify any company name on it?
7 A I believe it says Newark Electric across the top.
8 Q And did the card change when you went from working for,
9 from when your paychecks switched from saying Newark Electric
10 2.0 to saying Colacino Industries?
11 A No, we used the same blue job cards.
12 Q Now, I know it's not blue but is General Counsel's Exhibit
13 25 an example of one of your job cards?
14 A Yes, it is.
15 (General Counsel Exhibit 25 identified)
16 Q And what's the company name on this?
17 A Newark Electric.
18 Q And the date of this job is what?
19 A May 4th of 2012.
20 Q If you were asked on May 4, 2012 where you worked what
21 would you have said?
22 A I worked on a project in a town of Savina.
23 Q What company did you work for?
24 A Uh --
25 Q If somebody asked you what would you have said?

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1 A I would have said Newark Electric.
2 Q Now, when you were working for Mr. Colacino did you wear a
3 uniform?
4 A No, we didn't.
5 Q Were you given any clothing with the company name or logo?
6 A I know I received, I got a t-shirt once and I had a nice
7 hooded sweatshirt that said Newark Electric on it.
8 Q Where were you given that?
9 A The t-shirt I probably had after I worked there a little
10 while I think I had some extras laying around. The sweatshirt
11 maybe have been around one of the holidays.
12 Q Do you remember what year?
13 A I'd be guessing but maybe 2009, 2010. I think I had, I
14 think I had it for a few years.
15 Q When you were working as a contractor, subcontractor or
16 when you were working --
17 A I think when I was a subcontractor, yes.
18 MS. SELLERS: I never no further questions at this time.
19 JUDGE CHU: Let's go off the record for a minute.
20 (Whereupon, a brief recess was taken)
21 JUDGE CHU: Back on the record. Ms. Sellers, are you
22 going to introduce 24 and 25?
23 MS. SELLERS: Yes, I'll offer General Counsel Exhibits 24
24 and 25.
25 MR. TREVETT: No objection to 25. Could we get some Voir

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1 Dire?

2 JUDGE CHU: Go ahead.

3 VOIR DIRE

4 BY MR. TREVETT:

5 Q Exhibit 24 which is that, this multiple pages, do you see

6 that?

7 A Uh-huh.

8 Q Now, at the top of this first page there's some

9 handwriting north E, is that your handwriting?

10 A Yes.

11 Q Is all of this handwriting on this page yours?

12 A Yes, it is. You mean all this stuff written down here?

13 Q All the handwritten stuff.

14 A Yes, it is.

15 Q Okay. And did you submit that page just like that to get

16 paid when you submitted that time sheet?

17 A Uh --

18 Q I'm not trying to be confusing. I just want to make sure

19 that all this writing was on this time sheet when you submitted

20 it and not made some time at a later point.

21 A I'm just looking at it here. I'm trying to think of, and

22 maybe you can help me with the dates of this, July, the week

23 between July, or I'm sorry, June 11 and June 18, is that when it

24 went from, the paycheck went from Newark Electric 2.0 to

25 Colacino Industries? I think these were, these are all correct.

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1 A Yes. I believe when I made, when I signed copies and gave

2 them to Renee, I think --

3 Q The board investigator, the NLRB --

4 A Yes.

5 Q -- board investigator.

6 A I was identifying that the first two copies that say

7 Newark Electric, I was just saying that was when I was getting

8 my paycheck from Newark Electric 2.0, and then these turned out

9 to be Colacino Industries paychecks.

10 Q So, the last page again you circled the Colacino, that's

11 your circle but --

12 A That's my circle.

13 Q -- it came afterwards?

14 A Afterwards, yes.

15 Q And the rest of the writing is yours at the time you

16 submitted it for pay?

17 A Yes.

18 MR. TREVETT: All right. Judge, with those

19 understandings I don't have any objection.

20 JUDGE CHU: All right, let me double check. The first two

21 pages that say Newark E, and then the second page Newark

22 Electric 2.0.

23 THE WITNESS: Right, that's what I wrote on there when I

24 gave them to I believe Renee, the copies.

25 JUDGE CHU: So, those were penned in by you afterwards?

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1 There's some writing up here that says Newark E, Newark Electric

2 2.0.

3 Q I'm just on the first page, hang on.

4 A Oh, yeah, everything is my writing. Is that --

5 Q It was all on the card when you submitted it for to get

6 paid, that's all I'm asking?

7 A Oh, yes. Oh, yeah.

8 Q Page two all your handwriting including Newark Electric

9 2.0 at the top?

10 A Oh, yes.

11 Q And all on the top on the card when you submitted it?

12 A Yes.

13 Q Page three, or the third page rather, all your

14 handwriting?

15 A Yes.

16 Q Did you circle the Colacino Industries logo?

17 A Yes, I did.

18 Q And you submitted it just like this for pay?

19 A No.

20 Q Did you say no?

21 A Yes, I did say no.

22 Q So, you, was not all this writing on it when you submitted

23 it for pay?

24 A Oh, the circle wasn't there when I submitted it for pay.

25 Q Okay. So, that was added at some other point, other time?

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1 THE WITNESS: Yes. I had copies of these and I just was

2 showing her that from the last two weeks my paychecks were

3 Newark Electric 2.0. The first page they were just Newark E.

4 The Electric 2.0 didn't show up apparently when I faxed it.

5 JUDGE CHU: All right, thank you.

6 THE WITNESS: That's all it was. I just, that was my

7 writing on the top and the circles were Colacino Industries.

8 JUDGE CHU: Okay. Exhibits 24 and 25 are admitted into

9 the record.

10 (General Counsel Exhibits 24 and 25 received)

11 MR. TREVETT: I mean if I could have a couple of minutes,

12 Judge?

13 JUDGE CHU: Sure.

14 MR. TREVETT: Thank you.

15 JUDGE CHU: Go off the record.

16 (Whereupon, a brief recess was taken)

17 JUDGE CHU: Back on the record. We're ready for cross

18 examination, please.

19 MR. TREVETT: Yes.

20 CROSS EXAMINATION

21 BY MR. TREVETT:

22 Q So, look at General Counsel's Exhibit 20 which is your

23 paycheck stubs. You've had paycheck stubs from Newark Electric

24 2.0, correct?

25 A Yes.

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1 Q And you got them Colacino Industries, right?

2 A Yes.

3 Q Did, you never got a paycheck stub from Newark Electric

4 Corp. did you?

5 A Not, no. I would say they're all what I got here they

6 started off at Newark Electric 2.0, and then went to Colacino

7 Industries.

8 Q So, those were the two companies you were working for, 2.0

9 and Colacino Industries, the ones who were paying you?

10 A Yes, that's where my paystubs came from, yes.

11 Q And you know, you know Dick Colacino do you?

12 A Yes.

13 Q Does he also work for Jim?

14 A Yes, he does.

15 Q Did you know if prior to working for Jim he had his own

16 company?

17 A Dick Colacino?

18 Q Were you aware of that?

19 A I was assuming that Dick was the owner of Newark Electric

20 and then until Jim took over.

21 Q You say you assume, what would make you say that?

22 A Well, I mean because I've always lived in town. I knew

23 Dick Colacino had Newark Electric business.

24 Q At some point in time you were aware of Newark Electric

25 2.0 as being a different company?

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1 A Well, when I received my first paycheck I just inquired

2 about it and at the time Cory Brink was the off manager, and she

3 was, she tried to go over information with me about Newark

4 Electric 2.0. And we were trying to do some separate job cards

5 so that she could kind of keep track of the work that I did, or

6 the Union did. I was the only Union person there I guess at the

7 time so the work I did.

8 Q So, this was what you were doing for which company though?

9 A Newark Electric.

10 Q And is that when you were getting paid Newark Electric

11 2.0's pay stub?

12 A Yes.

13 Q All right. So, that's when you were going Union work.

14 And then there came a time when that changed over to Colacino

15 Industries?

16 A Yes.

17 Q And then did you have any conversation, well, let me ask

18 you this. What were your conversations with Ms. Brink about the

19 Newark Electric 2.0?

20 A The only conversation well it was more her to be because

21 she wanted me to try to do something different with job cards.

22 She wanted me, these job cards are, are normally blue. She made

23 copies of them.

24 Q Right, the ones that, the one that was --

25 A These here. This one here, the job, yeah, that one there.

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1 Q This one here.

2 A Just say job cards, so normal they're all blue. Cory was

3 kind of, so that she made copies of those but on a yellow format

4 so that she could identify jobs that I was doing. So, they,

5 maybe for billing purposes, maybe for keeping track of something

6 different.

7 Q So, when you were doing a job for Newark Electric 2.0 you

8 were, she wanted you to use a yellow version of this card, this

9 job card

10 A Yeah, but I believe I, I always filled them out, this

11 yellow because I guess maybe, when I first, when we first

12 started, or when Jim first assigned I think that was their way

13 or keeping track of my work that I was doing, my time, and then

14 the work that has other guys were doing because they weren't all

15 Union yet.

16 Q Well, let me ask you this, Exhibit 25.

17 A Yep.

18 Q When you filled it out it wasn't white was it?

19 A Right.

20 Q What color was it?

21 A This one here in particular?

22 Q This one here.

23 A This one was blue.

24 Q This one was blue.

25 A Yeah.

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1 Q But other ones you filled out were yellow?

2 A Yeah, but that was just when it was 2.0, so we'd have to

3 follow the procedure with the paychecks.

4 Q Okay.

5 A So, that was done on June 11 was the last pay stub for

6 Newark Electric 2.0.

7 Q June 11 of 2011.

8 A Yes.

9 Q And this is a 2012, so this is why it's on blue.

10 A Yes.

11 Q Were you party to any discussions as to why Jim was not

12 using Newark Electric 2.0 anymore?

13 A No, I just was assuming because I didn't notice until,

14 when I got the first paycheck from Colacino Industries on the

15 following weeks, it would have been the week ending 6/18. I

16 just had asked, what had happened is I looked at the, the year

17 to day amount and you can see that from year to year at 2.0 it

18 was year to day gross or something was, you know, 16 thousand

19 something.

20 And then on the new one it started off fresh so it was

21 whatever the gross amount there, 19, 19 something, 78, maybe.

22 Q When you switched over from Newark Electric 2.0 paychecks

23 to Colacino Industries paychecks do you recall filling out the

24 paperwork of W-9s to make that switch?

25 A W-9?

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1 Q Yes, like a W-9 Form withholding form.
 2 A You know I don't, I don't recall that but it's possible I
 3 did. I don't know if they had anything in the records that
 4 maybe will show that. I mean if I, it may have happened after
 5 this. She may have realized that I needed this filling out
 6 before going out. I don't recall but she was pretty thorough so
 7 she may have got that to me eventually so everything was right
 8 in the books.
 9 Q Just for the record you were shown a picture. I'm
 10 thinking about this, this is General Counsel 19 picture.
 11 A Yep.
 12 Q Did you take that picture?
 13 A Yes, I did.
 14 Q When did you take it?
 15 A Let's see the date on it, probably I want to say it was
 16 after my initial time with Renee, so maybe September.
 17 Q Did you take that at anybody's request?
 18 A No. Oh, you mean what? I don't understand.
 19 Q Did anybody ask you to take a picture of the vehicles?
 20 A No, I don't recall. I don't know if I said maybe I could
 21 get a picture of a van because they were wondering what the logo
 22 was on the side.
 23 Q Now, I believe you testified at one point you were asking
 24 about being laid off on July 20th, the issue of being laid off
 25 on July 20th, do you remember that testimony?

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1 Q Or Colacino Industries, either?
 2 A Well, two employees, Scott Barra and Rick Bush, they had
 3 previously dropped earlier in the week or the week prior, they
 4 had already turned in their card to the Union hall so they
 5 weren't Union members anymore. So, they had gone to work for
 6 him prior to the 20th.
 7 JUDGE CHU: When Mr. Colacino said, probably, you know,
 8 they're going to lay you off, by July 20th did he give a reason
 9 why?
 10 THE WITNESS: No, because I think we both, I think he knew
 11 the reason I was asking it. And I know everything that the
 12 answer was. It was just a fact that July 20th was this
 13 particular date that, I guess I was looking at July 20th as that
 14 was being the date that was his last day with the Union, so I
 15 wasn't leaving the Union. So, I just, you know, was going to go
 16 back, get laid off, go sign the book at the Union Hall to go.
 17 Q Do you recall Scott Barra being present during any
 18 conversations between you and Jim Colacino about your being laid
 19 off?
 20 A I don't, when I asked Jim that question I don't believe
 21 Scott was there at that time.
 22 Q That's not my question, sir. My question is do you recall
 23 Scott Barra being present during any conversations between you
 24 and Jim Colacino about your being laid off on July 20th?
 25 A I don't recall that at all, I'm sorry.

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1 A Yes.
 2 Q And you, my notes indicate that you said you could not
 3 work for Jim as a Union employee, was that accurate, did you, is
 4 that an accurate characterization of your testimony?
 5 A Yes, it would be.
 6 Q Why do you say that you could not work for Jim as a Union
 7 employee?
 8 A Well, if he was non-union I don't see how I could work for
 9 him.
 10 Q Did you ever have any conversations with Jim about that?
 11 A About being a Union employee still working for him?
 12 Q No, about laying you off because you were a Union
 13 employee.
 14 A No, like I said earlier it was I asked him, you know, like
 15 a couple of days before the 20th if his intention was to lay me
 16 off on the 20th, that was the last day of the Union contractor.
 17 Q Did you ask Mr. Colacino to lay you off?
 18 A No, I asked him if it was his intention to lay me off.
 19 Q And what did he say to that?
 20 A He said yes, that would probably -- his exact words, "yes,
 21 that's probably what's going to happen" and "Yes, that's what
 22 we're doing".
 23 Q Were there other employees in the Union that continued to
 24 work after July 20th, if you know?
 25 A At Newark Electric?

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1 Q Okay.
 2 A I hadn't had much conversation with Scott the last two
 3 weeks prior to that. We did work on a job maybe a couple of
 4 times, but other than he was working elsewhere, and I was
 5 working elsewhere, so I didn't, we didn't have much
 6 communication.
 7 Q Do you, is it fair to say that you were aware that there
 8 came a time when you certainly were not doing anymore work as a
 9 Union employee through Newark Electric or T.O. You have to say
 10 yes or no.
 11 A Oh, yes.
 12 Q And there came a time when all of that work was being done
 13 through Colacino Industries correct?
 14 A Yes.
 15 Q And that happened in or about July of 2011?
 16 A When it changed over to Colacino Industries?
 17 Q Right.
 18 A Well, I guess on the, on the checks here it says June 18
 19 of 2011, so.
 20 Q Were you aware that Jim Colacino had signed a letter,
 21 these letters what I call letters of assent with the Union, do
 22 you know anything about that?
 23 A Very little. I do remember, well, the first time he
 24 signed it because I went to work for him in late February, early
 25 March of 2011. The second time I was, I wasn't sure what was

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1 going on, that would have been between Jim Colacino and Mike
 2 Davis.
 3 Q So, you didn't have any conversation with Jim about that,
 4 and you weren't, you didn't --
 5 A No.
 6 Q -- overhear any conversation --
 7 A No.
 8 Q -- about that, fair? Now, I'm going to switch gears and
 9 talk about your termination.
 10 A Okay.
 11 Q Of July 20th, the June 20th. Your testimony as I
 12 understand it is you've got the letter terminating you in a box
 13 at the end of the day like 3:30 or so, right?
 14 A Right.
 15 Q On the 29th?
 16 A When you get your paycheck, it was in the envelope.
 17 Q So, you didn't, and I think your testimony was you had not
 18 had any conversation with Mr. Colacino prior to that about the
 19 reasons for the termination.
 20 A Correct.
 21 Q And you testified that you talked to him the next day
 22 about that?
 23 A Yes.
 24 Q And the two of you worked it out on the 30th, as to the
 25 termination and the rescinding of it?

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1 A Yes, we, that's what the main reason for me going in at
 2 8:00 in the morning was.
 3 Q When you had that meeting with Jim about the rescission
 4 who was there besides you and Jim, anybody?
 5 A It was just me and Jim at first until, I'm going to say
 6 9:00, maybe an hour later, and then Scott Barra came in also.
 7 He stopped in his office.
 8 Q But prior to Scott coming into that conversation had you
 9 worked out that issue with Mr. Colacino?
 10 A As far as the termination?
 11 Q Correct.
 12 A Yeah, we had discussed it. He had just said that he had
 13 some, well, initially it started with, you know, I asked him, I
 14 said I never took a paper off your desk. And I, I don't want to
 15 say demanded but I did ask him to look at your camera. You've
 16 got cameras in your office. I wasn't in here. I never took a
 17 paper off your desk. You know, and he, he just had said that,
 18 you know, he had some misleading information from maybe the
 19 office.
 20 We discussed it briefly and he just said I was kind of
 21 maybe collateral damage, I'm not sure. Just from discussions of
 22 things going on or --
 23 Q Is it fair to say then that he believed you when you said
 24 you didn't take the paper?
 25 A I would hope so. I think he did, yes.

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1 Q And on that basis he went ahead and rescinded the letter
 2 and reinstated your employment is that right?
 3 A Yes.
 4 Q Now, Mike Davis wasn't part of that meeting?
 5 A No.
 6 Q He had nothing to do with it?
 7 A Not on Saturday morning, no.
 8 Q When you resolved the issue about your termination.
 9 A Correct.
 10 Q And that was Saturday the 30th?
 11 A Yes.
 12 Q The, if you could take a look at the layoff letter which
 13 is that exhibit 23, do you see that?
 14 A Yes.
 15 Q All right, so you had a discussion on July 20th with Jim
 16 prior to this letter is that correct?
 17 A Yeah, it's the date when, it was in the office in the
 18 afternoon, so yes.
 19 Q What time of day did you get this letter?
 20 A I'm going to say it was around 3:30, because I was in A
 21 check when I was getting ready to leave.
 22 Q And so per our conversation earlier today, so that
 23 references a conversation between you and Jim is that right?
 24 A Yes.
 25 Q Colacino.

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1 A Yes.
 2 Q Anybody else present during that conversation that you
 3 recall?
 4 A I don't know I think we were in a hallway maybe he had
 5 asked if there was anything he needed to do, if I needed a
 6 letter of anything. And I says you're kind because I was just
 7 looking for, usually when you get laid off from a contractor
 8 they give you a note with information on it for unemployment
 9 purposes.
 10 Q Was anybody else around when that happened, Scott Barra or
 11 anybody like that that you remember?
 12 A I don't think so.
 13 Q Okay. Did you have any, did you help Mr. Colacino figure
 14 out any of the language that was in this letter?
 15 A No.
 16 Q How to phrase it?
 17 A No, I didn't.
 18 Q So, this is all his language?
 19 A Yes.
 20 Q After you received this letter did you have any further
 21 meetings or questions with Mr. Colacino, any conversation?
 22 A You mean like weeks later or?
 23 Q Well, I mean let's start with that day, after you got this
 24 letter did you have --
 25 A No.

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1 Q -- any conversation about it on the 20th?
 2 A No, because I grabbed my paycheck, shook their hands
 3 because at the time we were in the tech room upstairs next to
 4 his office and standing there with him and Tony DiFranco and I
 5 departed on good terms.
 6 Q Did you have any conversations with Jim subsequent to the
 7 20th about the layoff?
 8 A Prior to?
 9 Q Subsequent.
 10 A Afterwards.
 11 Q Afterwards, yes.
 12 A No, there was no reason to.
 13 MR. TREVETT: Judge, if I could have just a couple of
 14 minutes to check something?
 15 JUDGE CHU: Sure.
 16 (Whereupon, a brief recess was taken)
 17 JUDGE CHU: Back on the record.
 18 BY MR. TREVETT:
 19 Q If you will look back at --
 20 JUDGE CHU: Before you continue I just want to inquire of
 21 this witness this --
 22 MR. TREVETT: Yes, Judge, go ahead.
 23 JUDGE CHU: Just briefly. I want to go back to what Mr.
 24 Trevett had asked you about this layoff notice.
 25 THE WITNESS: Yep.

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1 THE WITNESS: No, I did not.
 2 JUDGE CHU: But you had this understanding or belief as to
 3 why you were being laid off because it was, you believe it was
 4 no longer going to be a Union shop?
 5 THE WITNESS: That's correct.
 6 JUDGE CHU: And then you saw this due to lack of work, did
 7 you not question that?
 8 THE WITNESS: No, I didn't.
 9 JUDGE CHU: Why not?
 10 THE WITNESS: I guess it don't matter to me at the time.
 11 I didn't, I wasn't, I mean I read it and just, I didn't, whether
 12 it was lack of work for a Union employee, I mean I didn't
 13 really, I didn't look into it deep or nothing.
 14 JUDGE CHU: Oh, okay.
 15 THE WITNESS: I, I wasn't looking for a reason.
 16 BY MR. TREVETT:
 17 Q Well, I think you, you did testify though at the time you
 18 were laid off there was not a lack of work for you, you had not
 19 finished the jobs, right?
 20 A The work at Newark Electric they were still jobs to do,
 21 yes.
 22 Q For you that you were working on?
 23 A Sure.
 24 Q They weren't finished.
 25 A Yes.

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1 JUDGE CHU: And the per our conversation earlier today.
 2 THE WITNESS: Yep.
 3 JUDGE CHU: Do you see that?
 4 THE WITNESS: Yep.
 5 JUDGE CHU: What was discussed in that conversation
 6 earlier that day?
 7 THE WITNESS: That it was probably going to be my, you
 8 know, it was going to be my last day but we both knew that from
 9 prior days.
 10 JUDGE CHU: And did he say why, did Mr. Colacino say why?
 11 THE WITNESS: No, because, I mean we both knew the reason
 12 I was leaving, it was because of, I know I keep going back to
 13 the date July 20th, but July 20th was the last day that as me
 14 being a Union employee. It was the last day I was going to work
 15 there.
 16 JUDGE CHU: So, then you received this letter later that
 17 same day.
 18 THE WITNESS: Yes, it was in my final paycheck.
 19 JUDGE CHU: Right, and you read it.
 20 THE WITNESS: Yes.
 21 JUDGE CHU: And you saw the reason why you were being laid
 22 off?
 23 THE WITNESS: Yes.
 24 JUDGE CHU: Did you question the reason why you were being
 25 laid off?

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1 Q Did you have any conversation with the Union about this
 2 layoff issue?
 3 A No. I mean I just I told him I was probably going to be
 4 getting laid off, I mean.
 5 Q Did you have any conversation with anybody from the Union
 6 as to what would happen if you continued to work past July 20th
 7 for Mr. Colacino?
 8 A No, I never did inquire on that.
 9 Q Did you have any knowledge of what would happen if you
 10 continued to work after July 20th for Mr. Colacino?
 11 A No, I mean we hadn't really discussed anything like that.
 12 Q Well, that's my question. Did you have any knowledge from
 13 any other source as to what would happen if you continued to
 14 work for Mr. Colacino after July 20, 2012?
 15 A No. I'm going to say it was probably my doing, because I
 16 just, because it going to a Union Employer anymore, so for me to
 17 work for him there would no way he could pay into my benefits.
 18 Q Let me ask you this. Could you have been penalized by the
 19 Union do you know for working for a non-union Employer?
 20 A I don't know that answer.
 21 Q You don't know if you could be brought up on charges?
 22 A No, I don't.
 23 Q Okay. So, from your mind the only down side would be not
 24 to be paid the Union benefits like the health and welfare, not
 25 the pension, is that correct?

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1 A Yeah, because if he wasn't a, if he wasn't a Union
 2 contractor there would be no way he could pay into the benefit
 3 package.
 4 Q So, is it fair to say then there was an economic element
 5 to this layoff for you?
 6 A I don't know about economic development. It was just what
 7 was right and what was wrong. You've got to understand I've
 8 never been in a situation like this so I just was under the, you
 9 know, if I were, if he wasn't a Union contractor how can I work
 10 for him, that's my, that's my thought?
 11 Q But is it fair to say that Mr. Colacino didn't tell you to
 12 quit the Union.
 13 A Oh, no, he never did. He never told me that.
 14 Q He just indicated that his plan was to get out of the
 15 Union.
 16 A Yes.
 17 Q I want to go back to General Counsel 24, if I could, which
 18 is these, those sheets there.
 19 A Yeah.
 20 Q The weekly time sheets. Now, at the top there's the two
 21 different logos, right, there's Newark Electric, and then
 22 there's Colacino Industries.
 23 A Yes.
 24 Q And they appear, although my aged eyes cannot make it out
 25 so well, they appear to have two different phone numbers, one

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1 A Yes, I did.
 2 Q And in the affidavit it indicates that when a call was
 3 coming in for Colacino Industries the display on the phone would
 4 indicate Colacino Industries, excuse me. When a call was coming
 5 in for Newark Electric the display would be blank is that, do
 6 you recall that?
 7 A I guess that would be a both. I know, I think when
 8 Colacino Industries was ringing it said something like Colacino
 9 ringing in. And when it was Newark Electric it would just be
 10 like caller ID but no Newark Electric.
 11 Q Well, at the time you made this statement it was back in
 12 September of 2012, is that correct? Could you show a copy of
 13 that?
 14 A Wasn't it like August something, maybe, I don't know for
 15 sure. I do recall that statement. Do I, was it pretty close to
 16 what I just said though? I mean if it was Newark Electric just
 17 pretty much caller ID like the person calling in was on it, it
 18 didn't say Newark Electric line.
 19 Q Now, it says at the top there's a couple of initials and
 20 date, are those your initials and date?
 21 A Yes.
 22 Q Did you put that, okay.
 23 A Yep.
 24 Q So, that first paragraph at the top, the end of the
 25 paragraph number 23, it reads as I indicated it did?

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1 for each entity is that correct?
 2 A Yes.
 3 Q Were you aware that there were two different phones, one
 4 for each entity at the premises that he --
 5 A Yes.
 6 Q Did you ever have occasion to hear anybody answering the
 7 phones for Colacino Industries?
 8 A There were probably a couple of time, yeah, a few times.
 9 Q And what would they, did you notice what they said when
 10 they answered those phones?
 11 A It was either Newark Electrical, Newark Electric, or
 12 Colacino Industries, one of the two.
 13 Q And did you ever have occasion to answer the Colacino
 14 Industries phone?
 15 A No, because I think I would have, the only I would have
 16 answered the phone is if I was expecting a call to come up. I
 17 think the way the phones work, and I may be wrong, I don't, Jim
 18 would answer but, when somebody called in on 0-4-1-4, I think it
 19 was just caller ID came up.
 20 But I think on a Colacino Industries call and I think I
 21 said Colacino ringing in or not. I can't be 100 percent sure
 22 but I think that's, that's how they determined who was calling
 23 in.
 24 Q Well, you did this affidavit for the board agent is that
 25 correct?

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1 A It starts at the top you said?
 2 Q Yes, the second line down "when a call is coming in", do
 3 you see that?
 4 A Yep. Yeah, that's, I, I think I kind of said that. When
 5 Colacino called in it said Colacino Industries or Colacino
 6 ringing in. And if it was Newark Electric call I said the
 7 display would be blank, probably meaning no, I didn't see Newark
 8 Electric but I mean caller ID came up, the person calling in.
 9 Q Well, that's not a, so it wasn't blank. It said something
 10 else is that right?
 11 A Well, I mean it didn't, it didn't show Newark Electric on
 12 it. I guess you, I had mentioned that how would I know if it
 13 was Newark Electric or Colacino Industries if, Newark Electric
 14 there was nothing there that said Newark Electric. But if it
 15 was Colacino Industries it came in Colacino Industries, or
 16 Colacino ringing in.
 17 Q Okay. And the end of this you indicate that you had
 18 answered, you may have answered the phone Newark Electric even
 19 though the display read Colacino Industries is that right?
 20 A That would be correct, yeah.
 21 Q And again when you made this statement back in September
 22 of '12, almost a year ago, was your recollection better than
 23 today?
 24 A As far as what now?
 25 Q Well, let me just ask you this. Is this a fair

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1 representation of what you recollect happened?

2 A Yeah.

3 Q That's in this statement. All right.

4 A Yeah.

5 Q Thank you. I think you testified there was a period of

6 time when you did work as a subcontractor --

7 A Uh-huh.

8 Q -- for Colacino Industries is that right?

9 A Yes, sure.

10 Q And when was that?

11 A That would have been --

12 Q If you recall?

13 A It was started in May of 2007 and ended around November of

14 2010.

15 Q Right, November 2010, so that was before the Newark

16 Electric 2.0 --

17 A There was about a four month gap before --

18 Q When you were doing that work as subcontractor were you

19 doing it as, did you have a corporation name or FRA name?

20 A LLC.

21 Q What was the name?

22 A Blondell Electric, LLC.

23 Q Now, at that point in time Blondell Electric, LLC, were

24 you a Union or non-union outfit?

25 A -- was Union.

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1 Q With Local 840?

2 A Yes.

3 Q And you were allowed to subcontract with Colacino

4 Industries?

5 A Yes.

6 Q And the contract was with Colacino Industries is that

7 correct, is that who paid you?

8 A I, I'm pretty sure that's who the paychecks came from,

9 yes.

10 Q There were no paychecks as far as you know from Newark

11 Electric were there?

12 A I don't believe so. I think it was all Colacino

13 Industries.

14 Q And then so that runs up to November of 2010.

15 A Uh-huh.

16 Q And then after that you don't, is that when you stopped

17 working for Colacino?

18 A I dissolved Blondell Electric, LLC.

19 Q Okay. And after you dissolved Blondell Electric, LLC did

20 you work?

21 A Yes.

22 Q For whom?

23 A I worked for some contractors through the Union.

24 Q So, did you go back to the hiring hall after you dissolved

25 your company?

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1 A Oh, yes, yes.

2 Q That's what I was getting at.

3 A Yes, I was able to go back and re-sign, but when I was a

4 contractor I couldn't sign the book. But once I dropped my LLC

5 then I could re-sign the book at the end of the --

6 Q But at all times you were a Union member of Local 840?

7 A Yes.

8 Q And then, so there's another period of time between

9 November 2010 and later on in 2011, when you go back to work for

10 Colacino, or Newark Electric 2.0, I'm sorry --

11 A Uh-huh.

12 Q -- where you're doing jobs out of a hall?

13 A Yes.

14 MR. CREVVETT: One more second, I think I may be done.

15 Okay, I don't have any further questions at this time. Thank

16 you, sir.

17 JUDGE CHU: Thank you, counsel. Any redirect, please?

18 MS. SELLERS: I have no questions at this time.

19 JUDGE CHU: Okay. Thank you, Mr. Blondell, you're excused

20 as a witness. Do not discuss your testimony with anybody other

21 than your representative at this proceeding, all right?

22 THE WITNESS: Yes.

23 JUDGE CHU: Understood.

24 THE WITNESS: Yes.

25 JUDGE CHU: Thank you. You're free to go.

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1 (Witness excused)

2 JUDGE CHU: Can we reconvene at 9:30 tomorrow morning?

3 MR. TREVETT: We'll make it happen, Judge.

4 JUDGE CHU: All right. So, I'll see you in the morning at

5 9:30. Thank you. Off the record, please.

6 (Whereupon, at 6:06 p.m., the hearing in the above-entitled

7 matter adjourned, to reconvene on Tuesday, August 27, 2013, at

8 9:30 a.m.)

9

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C E R T I F I C A T E

This is to certify that the attached proceedings done before the
NATIONAL LABOR RELATIONS BOARD REGION THREE

In the Matter of:

NEWARK ELECTRIC CORP., NEWARK ELECTRIC 2.0, INC., and
COLACINO INDUSTRIES, INC.,

Employer,

And

International Brotherhood of Electrical Workers
Local 840

Respondent.

WORD INDEX

Case No. 03-CA-088127

Date: August 26, 2013

Place: Buffalo, New York

Were held as therein appears, and that this is the original
transcript thereof for the files of the Board

[Signature]
Official Reporter

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In The Matter Of:

NEWARK ELECTRIC, CORP., N E 2.0, INC &
COLACINO IND. n
FEDERATION OF ARMORED CAR
WORKERS

Attorney Notes

Vol. 1
August 26, 2013

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(17) switch - unemployment

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August 26, 2013

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47:10;36;23;79;13;14	121:4;122:17	151:9;153:13	we're (1)	6:24
47:10;36;23;79;13;14	121:4;122:17	151:9;153:13	we're (1)	what's (25)
47:10;36;23;79;13;14	121:4;122:17	151:9;153:13	we're (1)	22:19;27;4,24
47:10;36;23;79;13;14	121:4;122:17	151:9;153:13	we're (1)	31;9;3;12;39;2,7
47:10;36;23;79;13;14	121:4;122:17	151:9;153:13	we're (1)	44:7;69;25
47:10;36;23;79;13;14	121:4;122:17	151:9;153:13	we're (1)	without (5)

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OFFICIAL REPORT OF PROCEEDINGS
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

In the Matter of: Case No. 3-CA-088127

NEWARK ELECTRIC CORP.,
NEWARK ELECTRIC 2.0, INC.,
AND COLACINO INDUSTRIES, INC.,
A single employer and/or
ALTER EGO,

Respondent,
and

FEDERATION OF ARMORED CAR WORKERS,

Charging Party.

Place: Buffalo, New York
Dates: August 27, 2013
Pages: 157 Through 304
Volume: 2

OFFICIAL REPORTERS

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Wayne, NJ 07470
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BEFORE THE
NATIONAL LABOR RELATIONS BOARD

In the Matter of:

NEWARK ELECTRIC CORP., NEWARK
ELECTRIC 2.0, INC. AND COLACINO
INDUSTRIES, INC., a single
employer and/or alter egos,

Case No. 3-CA-088127

Respondent,
And

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, Local 840,

Charging Party.

The above-entitled matter came on for hearing pursuant to
Notice, before **KENNETH CHU**, Administrative Law Judge, at the
Niagara Center Building, 130 S. Elmwood Avenue, Suite 630,
Buffalo, New York, 14202, on Tuesday, August 27, 2013, at 9:00
a.m.

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A P P E A R A N C E S

On Behalf of the General Counsel:

CLAIRE T. SELLERS, ESQUIRE
MARY ELIZABETH MATTIMORE, ESQUIRE
National Labor Relations Board Region 3
Niagara Center Building, Suite 630
130 South Elmwood Avenue
Buffalo, New York 14202

On Behalf of the Respondent:

EDWARD A. TREVVEIT, ESQUIRE
HARRIS BEACH, PLLC.
99 Garnsey Road
Pittsford, New York 14534

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I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
1 JAMES RICHARD COLACINO	166	238	--	--	--
2 SCOTT BARRA	269	279	--	--	--
3 RICHARD COLACINO	282	287	--	--	--
4 VICKY BLISS	290	--	--	--	--
5 MICHAEL DAVIS	295	--	--	--	--
6					

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EXHIBITS

<u>EXHIBIT NUMBER</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>
1 General Counsel's:		
2 GC-18	(prev.)	237
3 GC-26	169	169
4 GC-27	169	169
5 GC-28 (a through i)	169	169
6 GC-29	208	208
7 GC-30 through GC-32	214	214
8 GC-33	219	219
9 GC-34	231	231
10 GC-35	235	--
11 Respondent's:		
12 R-2	236	236
13 R-3	239	239
14 R-4	243	243
15 R-5	285	285
16		

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1 MS. SELLERS: And, Your Honor, I just wanted to also state
2 that so far as you know, we've stipulated to the jurisdiction
3 of the Board over Colacino Industries and stipulated that
4 Colacino Industries and Newark Electric 2.0 are a single
5 employer or alter ego. So, we therefore have -- General
6 Counsel has jurisdiction of Newark Electric 2.0.
7 However, we're still trying at this point to establish
8 that we have jurisdiction over Newark Electric and also that it
9 is a single employer/alter ego status that was the reason for
10 the need to go through the boxes.
11 In that vein and it could possibly save a lot of time
12 today, we'd like to offer a stipulation to the fact that for
13 although there have been times in 2011 and 2012, customers of
14 Newark Electric were invoiced as joint customers of Colacino
15 Industries and Newark Electric; Newark Electric d'd business
16 over \$50,000 as alleged in the complaint and as such, we would
17 not need to go through numerous documents to establish that the
18 Board has jurisdiction over Newark Electric.
19 MS. MATTIMORE: However, we do have invoices, Your Honor,
20 that do -- that we can enter into the record that show the
21 names of the two companies on the face of the invoice, as well
22 as a recitation that it's a Newark Electric job and checks made
23 payable to Colacino Industries. And, we've chosen a sampling
24 from the many boxes that were produced, so as not to burden the
25 record unnecessarily and we are prepared to offer those into

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PROCEEDINGS

(Time Noted: 11:16 a.m.)

1 JUDGE CHU: Good morning. It's approximately 11:15. At
2 the request of the Acting General Counsel, I reconvened this
3 proceeding this morning a little bit later than what I had
4 indicated yesterday in order to give Ms. Sellers an opportunity
5 to review the documents that were submitted pursuant to the
6 subpoena.
7 Are we ready to proceed with the next witness?
8 MS. MATTIMORE: Your Honor, if I could just make an
9 appearance in this proceeding.
10 JUDGE CHU: Go ahead.
11 MS. MATTIMORE: My name is Mary Elizabeth Mattimore,
12 counsel to the General Counsel for Region 3, Buffalo. Thank
13 you. I signed the appearance sheet.
14 MS. SELLERS: Your Honor, also after having had more time
15 to go through all the boxes and having spoken to Respondent's
16 counsel, I'd like to reach an agreement on the record that all
17 documents that were subpoenaed have been provided thus far, as
18 far as the past weekend.
19 MR. TREVETT: Yes. We've given them everything that we
20 understand to be responsive to the subpoena, held nothing back,
21 no privileges, no other objections.
22 JUDGE CHU: All right. Fine. Thank you for your
23 cooperation.

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1 the record as a General Counsel exhibit. If we can show Mr.
2 Trevett, if he has no objections, or we can admit them through
3 the witness if that's the case.
4 JUDGE CHU: I don't know. Is it possible to stipulate
5 what Ms. Sellers has just indicated. I'm not sure whether I
6 need additional documentation as she just mentioned.
7 MR. TREVETT: Judge, I'm not able to make that
8 stipulation. However, I'm certainly willing to review the
9 documents and, presuming since we gave them to them, they're
10 all business records, that I'm not going to object to them.
11 So, we can probably do it without a witness. But, I cannot
12 stipulate to jurisdiction over Newark Electric Corporation
13 because I don't believe it exists.
14 JUDGE CHU: Okay.
15 MS. MATTIMORE: That's fine, Your Honor. We'll show Mr.
16 Trevett the documents we're talking about and put a
17 representative sampling in there and, then, we can question
18 the witness for any further evidence we think we need.
19 JUDGE CHU: All right. You can decide whether you can
20 just submit it as an exhibit or submit it pursuant to testimony
21 of a witness. All right?
22 MS. SELLERS: May we have a minute, Your Honor and go off
23 the record and show Mr. Trevett what we've got for exhibits?
24 JUDGE CHU: Off the record please.
25 (Whereupon, a discussion was held off the record.)

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1 JUDGE CHU: Any other further development on the
2 stipulation?

3 MS. SELLERS: The parties have agreed to enter two
4 documents as General Counsel's 25 and General Counsel's --
5 JUDGE CHU: We're up to 26.

6 MS. SELLERS: Okay. Twenty six and 27 which will
7 represent that -- will represent a sampling of all invoices
8 from Colacino -- all invoices provided by the Respondent
9 pursuant to the subpoena for 2011 and 2012.

10 General Counsel's 26 includes a cover sheet which is a
11 summary of documents of a sampling that's been provided.

12 MS. MATTIMORE: Which indicates, Your Honor, that they
13 have done business with other entities indisputably engaged in
14 interstate commerce of more than \$50,000 during the period
15 relevant to the complaint in this proceeding.

16 In addition and correct me if I'm wrong, Mr. Trevvett
17 we're seeking to enter a stipulation that this is a samp -- a
18 mere sampling of documents that there are boxes of that were
19 produced pursuant to subpoenas showing the same invoice pattern
20 showing both companies throughout 2011 and 2012, far too many
21 to burden the record with.

22 MR. TREVETT: I would just say, Judge, I agree that those
23 are a sampling of the documents. I did not have a chance to go
24 through the boxes myself to look at them. But, I don't
25 disagree that those are what they -- they are business records,

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1 they are what they purport to be and I think they are a
2 sampling of sorts of those documents.

3 The only thing I do not agree with is that they establish
4 jurisdiction over Colacino and there's some legal argument that
5 they --

6 MS. SELLERS: I'm sorry. You mentioned Newark Electric.
7 MR. TREVETT: I'm sorry. Newark Electric.

8 JUDGE CHU: All right. I will draw that legal conclusion
9 myself on my review of the documents. The parties, as I
10 understand it, just stipulate that these are the business
11 records of invoices from 2011/2012 from the Respondents.
12 That's pretty much --

13 MR. TREVETT: That were produced pursuant to the
14 subpoena.

15 JUDGE CHU: Identification of those two sets of exhibits.
16 MR. TREVETT: Yes, Judge.

17 JUDGE CHU: All right.

18 MS. MATTIMORE: And, Your Honor, if I may. Just to be
19 clear General Counsel's theory is not only have we established
20 independently that Newark Electric has done business of over
21 50,000 with other entities engaged in commerce, but also that
22 we would have jurisdiction based on our theory that they're an
23 alter ego/single employer. Thank you, Your Honor.

24 JUDGE CHU: That was stated yesterday at the opening
25 statement. All right. If we're ready now, we can proceed with

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1 the next witness?

2 MS. SELLERS: Yeah. General Counsel would call James
3 Colacino pursuant to 611(c).

4 JUDGE CHU: Mr. Colacino, can you step up to the witness
5 stand, please. Raise your right hand.

6 Whereupon,

7 JAMES RICHARD COLACINO
8 Having been first duly sworn, was called as a witness herein
9 and testified as follows:

10 JUDGE CHU: Thank you. Have a seat, please.
11 State for the record your full name and spell your last
12 name, please.

13 THE WITNESS: James Richard Colacino. C o l a c i n o.
14 JUDGE CHU: Thank you. Your witness, Ms. Sellers.

15 DIRECT EXAMINATION

16 BY MS. SELLERS:

17 Q Hi, Mr. Colacino. I'm Claire Sellers. We haven't been
18 actually introduced.

19 A How are you?

20 Q Thanks for lifting the boxes.

21 A No problem.

22 Q Mr. Colacino, what do you do for a living?

23 A I'm the president and owner of Colacino Industries.

24 Q And, they're an electrical contractor, correct?

25 A We're an automation house. We're a systems integrator.

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1 Electrical contracting is a portion of work Colacino Industries
2 does.

3 Q And, how many companies do you own?

4 A Currently, I own Colacino Industries. Newark Electric 2.0
5 was a company that we formed that has been dissolved.

6 Q And, how many employees work for Colacino Industries?

7 A I'm going to say, roughly, 12. I can get you an exact
8 count, but, roughly, 12.

9 Q Are those all people doing automation health systems --

10 A Automation systems --

11 Q Automation systems or it varies?

12 A It varies. We're kind of a multi-faceted company. But,
13 the majority of our work by volume is automation.

14 Q Are any of those 12 employees, did you include office
15 employees in those 12?

16 A Yes.

17 Q How many of those are office employees?

18 A We have four girls in the office and we have one
19 subcontractor, who does engineering for us per diem, he's in
20 the office a fair percentage of the time.

21 Q And, you said you own Newark Electric 2.0?

22 A I did. Yes.

23 Q And, were you president when it existed?

24 A Yes.

25 Q When was Newark Electric 2.0 created?

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1 A I want to say roughly February or March of 2011.
 2 (Pause.)
 3 Q Mr. Colacino, I'm showing you what's been marked as
 4 General Counsel's Exhibit 28A through I. If you could flip
 5 through. Do you recognize any of those documents?
 6 A Yes.
 7 Q Okay. And, what do these documents show?
 8 A This appears to be the letter of incorporation to form
 9 Newark Electric 2.0.
 10 Q Were you involved in that process? I know it says Dear
 11 Cory Brink, but were you involved in that process to form it?
 12 A Yes.
 13 Q If you can look at 28C. Are those your signatures on
 14 there?
 15 A Yes.
 16 Q Okay. And, who filled out -- Who filled it out, though?
 17 Did you -- is that your handwriting or is that --
 18 A No. That looks like Cory Brink's, our office manager at
 19 the time.
 20 Q Okay. And, where it says date acquired, what's the -- If
 21 you go down, it shows your add -- your name and address and,
 22 then you go over towards your signature, it says date acquired.
 23 A Yes. March 8th.
 24 Q Okay.
 25 A 2011.

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1 you accurately. I want to say -- I can't remember the time
 2 frame, but I want to say initially it was Tony Blondell and,
 3 then, possibly, Mike Bebernitz and others may have been on the
 4 payroll of this company.
 5 Q Newark Electric 2.0.
 6 A 2.0. Correct.
 7 Q And, what kind of work did Newark Electric 2.0 perform?
 8 A What we did is, we tried to segregate the type of work
 9 that was what I call bargaining unit work, the pipe, wire,
 10 anything that you would think of when you think of a
 11 traditional electrical contractor. Since that was a portion of
 12 what we did as a company, Electric 2.0 was an attempt to take
 13 that work and segregate it over to this company. So,
 14 everything from office lighting, building wiring, feeders to
 15 feed new structures, generators, that type of work.
 16 Q Okay. And, then what was the work being done by Colacino
 17 Industries at that time?
 18 A Colacino Industries, again, is kind of multi-faceted. We
 19 do software development. We do software as a service or hosted
 20 software applications mainly for water and waste water and food
 21 industry, automation machine, automation similar to what you
 22 would see in a GM plant, you know, assembly machines.
 23 Q Can you do that work without the other electrical work?
 24 A Yeah.
 25 Q Okay.

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1 Q Does that sound like it was created?
 2 A That's a rough time period. Yes.
 3 Q That Newark Electric 2.0 was created?
 4 A Yeah.
 5 MS. SELLERS: Okay. I'd offer General Counsel's 28A
 6 through I.
 7 MR. TREVETT: No objection.
 8 JUDGE CHU: Fine. And, earlier, there was General
 9 Counsel's 26 and 27 but not admitted. But, I assume there's no
 10 objection to 26 or 27 either.
 11 MR. TREVETT: Correct.
 12 JUDGE CHU: So, as marked and entered into the record 26,
 13 27 and 28.
 14 (General Counsel's GC-26, GC-27 and GC-28 (a through i)
 15 identified and received.)
 16 BY MS. SELLERS:
 17 Q When Newark Electric 2.0 existed, how many employees
 18 worked for Newark Electric 2.0?
 19 A I believe the only two employees that ever got moved to
 20 Newark Electric 2.0 was Tony Blondell and possibly Cory Brink.
 21 as we tried to segregate the time for office time that was
 22 spent on this, so she was probably on the payroll for this as
 23 well.
 24 Once we were signatory, then I believe others -- other
 25 people came on this payroll. So, I want to make sure I tell

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1 A Yeah. Some of it completely --
 2 Q Okay.
 3 A -- you can do without pipe and wire, traditional
 4 electrical work. Sometimes, we would design a solution and
 5 another contractor would buy that solution from us,
 6 traditionally a pipe and wire contractor. O'Connell Electric
 7 or one of the big guys might hire us to do just simply
 8 engineering.
 9 Q Okay. So, you created Newark Electric 2.0 to do
 10 bargaining unit work and so you could keep Colacino Industries
 11 non-union; is that correct?
 12 A The type of work -- It was our intent to have Colacino
 13 Industries do non bargaining unit work and, you know, any
 14 traditional pipe and wire go by the way of Newark Electric 2.0.
 15 Q Okay. And, now, you're also the president and CEO of
 16 Newark Electric, correct?
 17 A No.
 18 Q Were you ever?
 19 A No. I was never an officer of Newark Electric. I worked
 20 for Newark Electric back in the '70s and '80s -- actually,
 21 '70s, '80s and '90s, but never held a position of authority.
 22 Q I'm going to show you General Counsel's Exhibit 7. Now, I
 23 know Mr. Davis testified that you gave him that business card
 24 back in like 2006.
 25 A Yes.

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1 Q But, on there it does say Newark Electric and, then,
 2 president and CEO.
 3 A Yeah.
 4 Q So, were you president and CEO of Newark Electric in 2006?
 5 A No.
 6 Q Okay.
 7 A No. What had happened was, in around the year 2000, I
 8 entered into a buy/sell agreement with my father to buy the
 9 assets and the good will and customer base, but not the
 10 corporation, Newark Electric, and I can explain why. But, we
 11 did a buy/sell agreement that our attorneys and our accountants
 12 drew up to buy the names, the likeness, the logos, stationery,
 13 software and most importantly the customer base --
 14 Q Okay.
 15 A -- of my father's business. And, he was -- It's kind of
 16 unique.
 17 My grandfather started the company as Colacino Electric
 18 Supply.
 19 Q Okay.
 20 A When my father took over, he ran it under Newark Electric
 21 and, then, when I took over, I wanted to re-establish the
 22 Colacino brand, so I started Colacino Industries.
 23 Q Okay.
 24 A So, over, I would say in and around 2000 and I could be
 25 off, you know, six months or so, we bought -- I say we. I

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1 bought the assets from my father. One of the things that had
 2 happened is that nobody knew what Colacino Industries, it's too
 3 generic of a name. So, we wanted to retain the name
 4 recognition. So, I bought the -- As part of that agreement was
 5 although they used the name Newark Electric, that's who
 6 everybody knew us as. So, over a period of time as we
 7 transitioned and I can show you with some other documents,
 8 we're trying to keep the brand recognition.
 9 One thing, Newark Electric Corporation was at 131 Harrison
 10 Street in a building that my father owned. When I bought all
 11 the assets, I moved into a building across the street that I
 12 owned, it's at 126. This one, although it doesn't say Colacino
 13 Industries on it, it is the 126 Harrison Street address.
 14 Q What happened to the 131 address?
 15 A We sold the building to one of the neighbors. NARC
 16 Facility bought the building from us.
 17 Q Okay. And, your address, 126 Harrison Street, does it
 18 have both Newark Electric Corp. and Colacino Industries on the
 19 door for that name brand recognition that you're talking about?
 20 A When you walk into the foyer -- There's no sign in front
 21 of the building, but our truck's out there --
 22 Q Right.
 23 A -- so people can generally see it. But, when you walk in
 24 the door, there's two logos on the door. One of them says
 25 Newark Electric and has a more stylized, more modern look than

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1 this and it was on one of the documents --
 2 Q Yeah. I saw that.
 3 A -- that's like the next generation logo, if you will, and
 4 on the door is Colacino Industries.
 5 Q Okay.
 6 A And, not to belabor it, it was our intent, Colacino
 7 Industries being somewhat generic, that there would be a
 8 division or a subsidiary, or a sister company, Newark Electric
 9 2.0, that it was our intent to do the pipe and wire end of the
 10 business through that.
 11 Q Now, has Newark Electric been dissolved the way Newark
 12 Electric 2.0 was dissolved?
 13 A Yes. There was some delays in dissolving that because
 14 there was an outstanding 941, I think that's the proper number,
 15 was a payroll tax liability that my father had outstanding --
 16 Q Okay.
 17 A -- that prevented him from dissolving the books till that
 18 was resolved --
 19 Q Okay.
 20 A -- that has since been resolved and dissolved. So, the
 21 tax issue was resolved, the corporation was dissolved and it
 22 was, frankly, one of the reasons why I just didn't buy the
 23 whole corporation from my father, is the outstanding tax
 24 liability.
 25 Q Okay. How was that resolved, are you aware?

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1 A I believe he entered into an installment payment agreement
 2 and amortized it over a period of years.
 3 Q Okay.
 4 JUDGE CHU: When was NEC dissolved?
 5 THE WITNESS: I want to say, the only documents that I was
 6 able to find and we talked to our accountant, within the last
 7 two years. Possibly, in some of our documentation that Ed has,
 8 we might be able to find a more accurate date.
 9 JUDGE CHU: Thank you. Continue.
 10 BY MS. SELLERS:
 11 Q Is your father still working?
 12 A My father works for me part-time. He's a town supervisor
 13 in Arcadia --
 14 Q Okay.
 15 A -- and that takes a majority of his daytime efforts. But,
 16 he still does some estimating for me and a little bit of
 17 project management.
 18 Q Okay. And, how does he -- So, he works for Colacino
 19 Industries now, not Newark Electric.
 20 A Correct.
 21 Q Okay. As long as we started talking about your office
 22 location.
 23 A Yeah.
 24 Q Okay. So, Mr. Blondell yesterday tried to explain the
 25 phone system.

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1 A Yeah.

2 Q And, my understanding by the end of the day, hopefully,

3 you can clarify, is that there's one phone for Ms. Bliss to

4 answer, but calls come in on two different lines.

5 A Multiple lines.

6 Q Multiple lines. Okay. And, so, Newark Electric exists in

7 the sense that it still has its own phone number.

8 A The Newark Electric, when I bought the assets and I'm

9 going to use the term good will from my father, we did retain

10 his phone numbers, they rang into my building. Again, there

11 was a customer base of three or four thousand people that had

12 that --

13 Q That number. Right.

14 A -- number. So, when the -- And, Tony explained it pretty

15 accurately, when calls came in for Colacino Industries, it

16 would ID on the display and the same is true with the brand

17 that we bought, Newark Electric.

18 Q Now, would the customers be handled any differently based

19 on how you answered the phone?

20 A They did get a different greeting. But, depending on what

21 type of work that person was looking for, it would go to

22 either, again, the pipe and wire end of the business has a

23 different group. My father would handle a lot of that type of

24 work. And, the more automation related questions would go to a

25 different group of people. So, there was a little bit of a

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1 distinction there.

2 Q Okay. Do you know off the top of your head, the number

3 for Colacino Industries?

4 A I do.

5 Q What is it?

6 A 315 331-1330.

7 Q And, the number for Newark Electric?

8 A We have -- It's unique. We have the numbers all forward

9 to the 1330 --

10 Q Okay.

11 A -- but we take the A&I number for the A&I information

12 which is part of caller ID.

13 Q Okay.

14 A So, we have a pool of numbers that all forward to

15 Colacino, but they still uniquely identify themselves on the

16 caller ID.

17 Q Okay.

18 A So, to answer your question, Newark Electric's phone

19 number is one of them, 315 331-0414.

20 Q That's the one I've seen on the logo.

21 A Yeah.

22 Q Okay. And, who answers the phone for -- Who answers the

23 phone at your company?

24 A Generally, any one of the four girls that work in the

25 front office. They've got kind of a -- They all have quite a

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1 work load, so whoever's --

2 Q Available.

3 A -- available. Yeah.

4 Q And, what is the fax number for the company?

5 JUDGE CHU: Which company?

6 BY MS. SELLERS:

7 Q For Colacino Industries.

8 A Colacino Industries is 315 331-1076.

9 Q Okay. Does Newark Electric have a separate fax number?

10 A Back when Newark Electric Corp., when my father ran, used

11 that same fax number, 1076.

12 Q What about Newark Electric 2.0, did you create a separate

13 fax number for them?

14 A No. In fact, we fax so rarely now, I've even contemplated

15 not using it.

16 Q Now, I'd like to talk to you about the letter of assent,

17 which I will get for you.

18 MR. TREVVEIT: Which exhibit?

19 MS. SELLERS: General Counsel's Exhibit 6. Sorry.

20 BY MS. SELLERS:

21 Q Now, General Counsel's Exhibit 6, is the letter of assent

22 that was signed on February 24th, 2011, correct?

23 A Yeah.

24 Q Okay. And, that exhibit indicates that the name of the

25 firm is Newark Electric, correct?

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1 A Mm-hm.

2 Q Can you say yes or no?

3 A Yes.

4 Q Okay. And, that federal employer identification number is

5 the federal employee identification number for Newark Electric,

6 correct?

7 A That isn't the number that I recognize, so it leads me to

8 believe that that might be the legacy one from Newark Electric

9 Corp., the company my father owned.

10 Q Okay. Corporation. Okay. And, we earlier established

11 that Newark Electric 2.0 was created on March 8th, 2011,

12 correct? If you look back at --

13 A Yes. The Direct Incorporation. Yeah.

14 Q So, when you -- That was after this letter of assent was

15 signed, correct?

16 A I think that by this letter from Direct Incorporation, I

17 think we had filed for incorporation earlier. This may be when

18 we got notice that they had in fact filed, the company.

19 Q Okay.

20 A I remember the events taking place where the letter of

21 assent and the formation of Newark Electric 2.0 were hand in

22 hand at the same time.

23 Q Okay.

24 A So, I think this may have lagged behind. We had formed --

25 When I formed Colacino Industries, it was a very quick 24 hour

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1 process. I thought we used this company, but maybe it was a
 2 different one. It was one of the on-line companies.
 3 Q Okay. But, if you turn to General Counsel's Exhibit 28F.
 4 Go to 28 and just keep flipping. It's the document that says,
 5 obtain EIN.
 6 A Yeah.
 7 Q So, this appears to get your identification number for
 8 Newark Electric 2.0, it appears you applied for that on March
 9 8th, 2011. Okay.
 10 A As I understood it, we filed for the company name, Newark
 11 Electric 2.0, at the same time we signed the letter of assent.
 12 Upon receiving this paperwork, only after receiving this
 13 paperwork can you request an EIN.
 14 Q Okay.
 15 A So, that was the second step.
 16 MR. TREVETT: When you say this paperwork, you're
 17 referring to General Counsel's 28F?
 18 THE WITNESS: 28F. Yeah.
 19 MR. TREVETT: Okay.
 20 THE WITNESS: So, the day we received this, we then
 21 applied for the EIN for Newark Electric 2.0.
 22 BY MS. SELLERS:
 23 Q Okay.
 24 A I think the reference to Newark Electric -- This form was
 25 prefilled out, I didn't fill this out. And, it was probably

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1 sloppy on my part, but I had never noticed the Newark Electric,
 2 the address is right 126 for Newark Electric 2.0. The employer
 3 identification number, again, if I did see it, it was just
 4 sloppy on my part because there would be no EIN number
 5 available yet.
 6 Q But, you did sign it.
 7 A Yes, I did. That's my signature.
 8 Q Now, did you ever inform Mr. Davis or Mr. Culver, who was
 9 the business manager for the union at that time that you were
 10 not a representative for Newark Electric, that you only
 11 represented Colacino Industries and Newark Electric 2.0?
 12 A Inasmuch as we talked about my reason for wanting to form
 13 a separate company. I don't know that we specifically talked
 14 about Newark Electric as it relates to my father owning it.
 15 But, we did have extended conversations about my desire to form
 16 a separate corporation, split off the bargaining unit work and
 17 sign -- it I was going to sign, I was more comfortable doing it
 18 under a separate company.
 19 Q Okay.
 20 A And, so, my conversations with Mike Davis on multiple
 21 occasions, we talked about forming a new company.
 22 Q Okay. Did you ever inform that you had formed that new
 23 company?
 24 A Yes. When we -- When we finally agreed to sign one of the
 25 many letters of assent, I'd seen multiple copies of this over

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1 the years prior --
 2 Q Right.
 3 A -- Mike would pride himself in coming in with one already
 4 filled out ready for me to sign. When I finally did sign, I
 5 had made the decision I'm going to give it a try the letter of
 6 assent and I would form the new corporation.
 7 Q Okay. So, do you remember when you told Mike that?
 8 A I would assume it's the same date that we signed the
 9 paperwork on this letter of assent C, so it would be February
 10 24th.
 11 Q And, how do you remember that happened? Mike testified to
 12 it yesterday, but how do you remember it happened?
 13 MR. TREVETT: Are you talking about the signing?
 14 BY MS. SELLERS:
 15 Q The signing of the letter of assent on February 24th.
 16 Yeah.
 17 A If it's the same day, I remember that there was a little
 18 bit of a fanfare in the sense that Mike, if that's the day that
 19 Frank Mula and Clark Culver came down to the office. We signed
 20 the paperwork, everybody shook hands and we entered into this
 21 venture to give it a try. I think we went out to dinner as
 22 Mike mentioned. I can't tell you definitively it's on the
 23 24th, but it probably was.
 24 Q Okay. And, when you told him about this new company, you
 25 told him it was going to be called Newark Electric 2.0?

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1 A Oh, yes. Definitely.
 2 Q Now, your other company, Colacino Industries, when was
 3 that created?
 4 A Around, as I mentioned, when I bought the assets from my
 5 father, around 2000.
 6 Q Okay.
 7 A It coincides when I bought the building that we're
 8 currently in across the street and, so, I'm going to say,
 9 somewhere in 2000.
 10 Q And, back in February 2011 when you signed the letter of
 11 assent, you didn't sign a letter of assent for Colacino
 12 Industries because you were trying to run the companies
 13 separately as two companies, correct?
 14 A We were -- We were making an effort to truly segregate the
 15 work that the IBEW would be proficient at. We took the pipe
 16 and wire, was our attempt to take that portion of the business
 17 and segregate it into Newark -- I'm not sure I answered your
 18 question quite right.
 19 Q No, you did. Thank you.
 20 But, you did eventually sign a letter of assent for
 21 Colacino Industries, correct?
 22 A Yeah. Two months later.
 23 Q Okay. And, why did you do that?
 24 A What was happening was, it was very painful from an
 25 accounting and an administration -- for administrative purposes

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1 to run -- to try and segregate this. I'll give you an example.
2 We -- A lot of our customers are municipalities which don't pay
3 very quickly. Some of our projects can span several months
4 and, then, there's always some wait and see to get paid.

5 So, what happened is, we don't have the cash reserves. We
6 typically go week to week just trying to get money into the
7 payroll. So, when we had payrolls to make on the Newark
8 Electric side of things, there was no money there.

9 Q Right.

10 A We also were originally informed by our insurance carrier
11 at the time that we could with minimal cost have a new
12 insurance policy for Newark Electric 2.0, but, then, they
13 discovered that we had no experience factor, no experience
14 mods, because it's a brand new company.

15 Q Right.

16 A So, my insurance costs went up exponentially. So, it
17 became very painful for us to try and administer and segregate
18 these two companies. When I brought that to the attention of
19 Mike, I said, you know, this isn't working out as good as I had
20 hoped. It's very painful. I was thinking about at the end of
21 the six months pulling a plug on the whole thing. And, Mike
22 said, look, we can simplify it and I did ultimately agree, just
23 sign Colacino Industries, go back operating it under one
24 footprint and I said, that's what I'll do. So, I signed
25 Colacino Industries.

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1 A There was a period of time, I can't tell you definitively,
2 but we had a conversation about it and he had told me that he
3 had re-dated it.

4 Q Okay.

5 A I had never received a copy of that or never signed a copy
6 of that. But, that was my understanding. And, what we started
7 the process of doing, we immediately moved everybody back into
8 Colacino Industries, they filled out W-9s. All the employees
9 were aware that they were going -- Anybody that was in Newark
10 Electric 2.0 went -- they filled out the proper payroll
11 information and we started the payrolls in Colacino Industries.

12 JUDGE CHU: Did Mr. Davis inform you why he re-dated the
13 letter of assent C for Newark Electric?

14 THE WITNESS: Yeah. He said that it would be simpler to
15 have the two dates run concurrent with each other, it would be
16 easier and less confusing. And, I --

17 JUDGE CHU: And, what happened to his reluctance about
18 having two letters of assent with one employer?

19 THE WITNESS: I never heard of any more reluctance after
20 that initial conversation. I do know that when he mentioned
21 that he had re-dated it, I was a little bit discouraged because
22 I had assumed that one was going to come and go on its own time
23 frame and, now, it basically extended that trial period, this
24 letter of assent C, by four months. I didn't make issue or
25 take issue with it because quite honestly, we were going to be

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1 Q Did Mike Davis -- Do you remember Mike Davis telling you
2 that he had to confirm that with the International?

3 A I recall that Mike had a concern that you could not have
4 two letters of assent C -- a single person could not have two
5 letters of assent C, so we'd have to either dissolve or make
6 the other one go away, for Newark Electric 2.0, to have a
7 single letter of assent C.

8 On the same day that we discussed it, is the day that I
9 signed the letter of assent. So, I don't know if he went to
10 the International and that, I have no idea. But, as I
11 understood it, you could not have two concurrent letters of
12 assent C.

13 Q Is that why you believed the Newark Electric letter --
14 We'll call it the February 24th, 2011 letter of assent C was
15 dissolved?

16 A Those two things related to that. After a period of time
17 and I'm going to say 30 days or so, Mike had informed me that
18 had in fact re-dated the first letter of assent, so that the
19 two ran concurrent, it would be easier that way. And, so, I
20 thought the first letter of assent was gone. He said, I just
21 re-dated it. So, I was under the understanding that it
22 followed the same time line as the letter of assent which I
23 believe was June or July -- July 20th.

24 Q You're saying that conversation with Mike took place 30
25 days after July 20th, so it was August?

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1 working under Colacino, he thought that that would be a
2 smoother easier transition for me.

3 I will say that from a paperwork standpoint, once we got
4 away from trying to segregate that type of work and brought it
5 back into Colacino, it was easier on the girls in the office,
6 less payrolls, less certified payrolls, less reporting to the
7 IBEW. And, then, we started the process to dissolve Newark
8 Electric 2.0 because it was -- had no value to us anymore.

9 JUDGE CHU: When you were advised that Newark Electric 2.0
10 was not going to be working out, were you still within the time
11 frame to withdraw the letter of assent C for 2.0?

12 THE WITNESS: Yes. When we first had the conversations,
13 we had not hit the six month mark. You're obligated to be in
14 six months, but, then you have up to a year basically to get
15 out. When we first started the conversations about the
16 difficulty the girls were having in the office and we were
17 trying to keep this -- trying to segregate this, when we
18 finally made the decision and signed Newark Electric 2.0, we
19 were well within our options to exit.

20 JUDGE CHU: And, at the time when you saw it wasn't
21 working out were you still within that hundred and 80 day time
22 frame to withdraw?

23 THE WITNESS: Yes. I believe so.

24 JUDGE CHU: And, did you think it would be prudent on your
25 part to make that withdrawal instead of depending on Mr. Davis

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1 to allegedly re-date the letter of assent C for Newark
2 Electric?

3 THE WITNESS: I want to think about the time line because
4 I don't want to -- I don't want to speak wrong, Your Honor.
5 February, March, April, May, June, July. It would have been
6 right about the six month period. I was unaware, if you will,
7 of how the process was supposed to work, since I was just not
8 going to function under Newark Electric 2.0 and remove to
9 Colacino Industries. I had taken Mike on his word that, one,
10 you couldn't have two companies signatory, two letters of
11 assent C with a single owner and that by his -- his comment to
12 me that he had re-dated that, I just went back to running the
13 business. I never gave it another thought, to be perfectly
14 honest with you. I never thought that I would be in this
15 situation. There was never an intent to play games with the
16 dates or anything.

17 JUDGE CHU: Continue, please. Thank you.

18 BY MS. SELLERS:

19 Q Okay. So, there's at least three conversations so far.
20 The first conversation was when you said, we're having this
21 issue and Mike said, well, I don't know if we can -- allegedly
22 said, I don't know if we can have these two letters assent,
23 correct?
24 A The first conversation when I explained to him what the
25 problem was, he said, just sign Colacino Industries and the

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1 I'm sorry -- two letters of assent C.

2 Q Okay. Were those two conversations at the same time, or
3 were they on separate dates?

4 A I can't recall. I know Mike and I talked about my
5 frustrations several times on the phone, some of the problems
6 the girls were having.

7 Q Right.

8 A So, at some point, the conversation went to the -- just
9 sign Colacino and the problem will go away.

10 Q Okay. Was the conversation of just sign Colacino and the
11 problem will go away, the same conversation as you can't have
12 two letters of assent C?

13 A I would say yes.

14 Q Okay. And, when was that? Was that July 20th when you
15 ended up signing, or was it sometime before?

16 A It would be near that time.

17 Q Okay.

18 A It would be near that time, if not that day. But, I'm
19 going to guess it's on or about the 20th.

20 Q Okay.

21 A Not much time elapsed from those conversations to when I
22 did sign Colacino Industries.

23 Q And, where was the conversation? Was it on the phone?
24 Was it in your office?

25 A No. It probably was in my office.

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1 problem goes away.

2 Q Okay.

3 A And, I said, you know where my hesitation is and just so
4 that the Court understands, my hesitation was, the majority of
5 the work that we do as a company is not a good fit for what the
6 IDEW does, there is a portion of it.

7 Q Okay.

8 A But, I have to have people that have a skill set that they
9 typically -- Programming as an example, software development.
10 That's not their strong point. So, it became painful for us
11 because we are a small company, we have to wear multiple hats.
12 Sometimes, a guy who writes programming today might pull some
13 wire tomorrow. And, so, the paperwork to keep track of this in
14 different geographical areas, different jurisdictions. We work
15 in Syracuse, that's not Mike. We work in different counties
16 and townships. My guys pour concrete and nail two by fours
17 together, so we have to report to the carpenters' union, the
18 ironworkers. It's a nightmare.

19 So, I had hesitations to begin with about signing the
20 whole company. Mike's answer to my headache in the office and
21 the administration was sign Colacino Industries. Once I
22 decided -- I said, all right. I want to give this a fair
23 trial, I'm going to give it a hundred percent. I'll sign
24 Colacino Industries. He said, I need the check. I need to do
25 some checking on my end because you can't have two companies --

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1 Q Okay.

2 A Again, it's so hard to remember and I want to tell you
3 accurately. But, if I had to guess, it was in my office.

4 Q Okay. And, then, on another day in another conversation,
5 July 20th, you signed the letter of assent C for Colacino
6 Industries, correct?

7 A Again, I can't tell you if it was a different day, but --

8 Q A different conversation.

9 A Yeah. Probably.

10 Q Okay. Then, when you signed the letter of assent C on
11 July 20th, we know that's true.

12 A Yeah.

13 Q At that time, there was no conversation or confirmation
14 about what was going to happen to the Newark Electric letter of
15 assent C, correct?

16 A Correct.

17 Q Okay. Then, I just want to make sure I have it clearly.

18 A Yeah.

19 Q Then, at some point in the future, according to you, you
20 got a random phone call from Mike --

21 A I don't know if it was random. But, yes.

22 Q An unexpected. You hadn't solicited the phone call.

23 A Probably not.

24 Q Okay. An unexpected phone call from Mike and he said,
25 we've re-dated the Newark Electric letter of assent C --

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1 A Yeah.
 2 Q -- to match the July 20th date.
 3 A Yeah.
 4 Q Okay.
 5 A And -- Go on. I'm sorry.
 6 Q And, at that time, did he explain why?
 7 A Yes.
 8 Q What did he say?
 9 A It would simplify the paperwork. It just made more sense
 10 to have them -- In Mike's estimation, he went back to the fact
 11 that Newark Electric 2.0 and Colacino Industries were really
 12 one and the same, we might as well have these two coincide on
 13 the same date, it would be simpler for everybody.
 14 Q Did he say Newark Electric 2.0?
 15 A I can't specifically say if he said 2.0 at the end. But,
 16 he said Newark Electric, I'm sure.
 17 Q Okay.
 18 A I don't know 2.0. Again, Mike was intimately aware of the
 19 fact that I formed a separate corporation for segregating this.
 20 Q Did you get a copy of the Newark Electric letter of assent
 21 C re-dated?
 22 A No, I did not.
 23 Q Okay. Did you ask for one?
 24 A No, I did not.
 25 Q Okay. Did you get anything in writing for the -- stating

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1 Q And, she --
 2 A She came to Colacino --
 3 Q Did you acquire her with the --
 4 A She came with the tools.
 5 Q Okay. Fair enough. It's hard to find a good help -- good
 6 staff, I should say.
 7 A It's true. It is.
 8 Q So, when you signed the letter of assent in February 2011,
 9 Cory Brink was working for you.
 10 A To the best of my knowledge. Yes. Yeah.
 11 Q Okay. And, then, what about in July 2011 or June 2011
 12 when you were making that switch, who was your payroll person
 13 then?
 14 A I think it was still Cory.
 15 Q Okay. So, Cory or Vicky did payroll for you regardless of
 16 which company the employees were working for.
 17 A Yeah. We also, for a period of time under Colacino
 18 Industries, I think we used pay checks years ago, but we took
 19 that in-house over the last four or five years, it's probably
 20 all been in-house.
 21 Q Okay. Now, you said you're the owner of 126 Harrison
 22 Street?
 23 A Yes.
 24 Q And, how long have you owned that property?
 25 A I bought it, I think, around 2000, same time I bought the

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1 this, or this is just a conversation that you recall?
 2 A Just a conversation.
 3 Q Okay. You said the payroll and keeping everything
 4 straight was an issue. Who did payroll -- I think you touched
 5 on this. But, who did payroll for Mr. Blondell and other
 6 employees before the letter of assent was signed in February
 7 2011, the first Letter of assent?
 8 A We had two office managers in the time period that we're
 9 talking about.
 10 Q Okay.
 11 A Vicky Bliss worked for us for -- since -- she worked for
 12 me specifically from '99 or 2000 to some period of time in the
 13 last two or three years. She went away for about a year, went
 14 on her own venture. She's now back with the company.
 15 Q Okay.
 16 A And, then, Cory Brink ran the office in the interim. Cory
 17 did payroll and she did payroll for Newark Electric 2.0, as I
 18 recall.
 19 Q Okay. So, Cory just ran it for one year and the rest of
 20 the time it was Vicky?
 21 A Pretty much. It might be a year or two, but, yeah.
 22 Q Okay. And, so, Vicky was who was running payroll when you
 23 made the switch -- Did she work for your father at Newark
 24 Electric?
 25 A She did. Yeah.

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1 assets from my father.
 2 Q And, you own that personally, not as the corporate entity
 3 Colacino Industries.
 4 A I own it personally and the company pays me rent.
 5 Q Okay. And, did Newark Electric 2.0 ever pay you rent?
 6 A I believe so. Yeah.
 7 Q Okay.
 8 A Yeah.
 9 Q And, did Newark Electric ever pay you rent?
 10 A Newark Electric, when my -- They did, but not for that
 11 building. For the building across the street --
 12 Q Okay.
 13 A -- when my mother and father divorced, I bought the
 14 building as part of that divorce agreement, they had to sell
 15 the building. I bought it and leased it back to Colacino --
 16 sorry -- Newark Electric.
 17 Q Okay.
 18 A So, they did pay rent, but not for the building at 126.
 19 Q They paid for 131.
 20 A You got it.
 21 Q One second. Now, Cory Brink, when did she work for you,
 22 approximately?
 23 A Cory's worked for us on and off over these years. She's
 24 come and gone so many times, I can't keep track. But, I think
 25 towards the fall of 2011 is when she left and she worked for

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1 Clifton Hospital now. But, I think two years, that last stint,
2 up until the fall of 2011 is probably two or three years.
3 Q When was she first hired, the first time she ever came to
4 work for you?
5 A Early 2000, maybe, 2003 or 4.
6 Q Did she work for Newark Electric, ever?
7 A No.
8 Q Okay.
9 A I would assume that all of her pay checks came from
10 Colacino Industries and, then, for that very short period of
11 time, there might have been a few from Newark Electric 2.0,
12 cause we tried to keep track of all the costs associated with
13 that newly formed corporation.
14 Q How do your email addresses work?
15 A I have -- Everything forwards to my
16 jcolacino@colacino.com. But, I have a jcolacino with gmail, a
17 jcolacino@newarkelectric, a jcolacino@enviralsystems. They all
18 forward to my one mail box, colacino.com.
19 Q What's Enviral Systems, is that another company?
20 A It was a division -- We did form a separate S corp at one
21 time. They were going to build strictly environmental controls
22 for the water and waste water industry. I've since sold the
23 shares of that to my daughter and she's going to run that
24 division of the company and ultimately file to become a WBE.
25 Q Okay.

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1 Q So, if Cory had a Newark Electric email address, then she
2 must have at some point worked for Newark Electric?
3 A Originally, when I bought the company from my father, I
4 bought, you know, the website address, everybody -- Even when I
5 ran Colacino Industries probably had early on a Newark Electric
6 address. Once we formed the domain, colacino.com, then we
7 pulled everybody over there. So, there might have been a few
8 years, two, three, four years, where everybody was at
9 newarkelectric.com. So, that could very well be.
10 Q Okay. Now, when you guys -- Not you guys. When you send
11 out stuff to the public, you're saying the email address now
12 says colacinoindustries, regardless of what email account it
13 opened, it's going to come out colacinoindustries.
14 A Yes.
15 Q Okay. But, what about how you put yourself out to the
16 public in terms of your letterhead, your signature line on your
17 email, your signature line on your letter, is that strictly
18 Colacino Industries, or is that Newark Electric Colacino
19 Industries, or Colacino Industries Newark Electric?
20 A The signature line on any correspondence that I personally
21 do and my engineers, my office people, all have the Colacino
22 Industries logo as part of this new third generation. I've
23 gone through some transitions in that. We're actually still
24 working on finalizing that branding. However, I think on some
25 of the invoices what you might be thinking of is, where we have

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1 A She wants to do that. So, that was over the last year and
2 she's currently going to school for controls and network
3 engineering. So, she -- Again, it was always my intention to
4 have subsidiaries or sister companies under Colacino
5 Industries. Enviro Systems was going to be one of them.
6 Q Okay. But, now you're going to pass it on.
7 A Yeah.
8 Q Okay. Now, say you hired me tomorrow.
9 A Yeah.
10 Q Would I be given a Newark Electric email address and a
11 Colacino address or just a Colacino address?
12 A No. Just a Colacino. All of our employees are strictly
13 Colacino with the exception of the ones that had already worked
14 under the Newark Electric for my father, which are
15 rcolacino@newarkelectric forwards to rcolacino@colacino.
16 Q Okay.
17 A Vicky, since she had legacy email out there under my
18 father's company vbliss@newarkelectric, but they all masquerade
19 to Colacino. Whenever they send email, it always goes out as
20 Newark Electric -- I'm sorry -- colacinoindustries.com. And,
21 one of the things we try to do on correspondence, any type of
22 correspondence, is educate people on our new address, all
23 checks need to be made payable to Colacino Industries. Our new
24 email address is vbliss@colacino.com. There's quite a
25 transition period that we've been trying to work through.

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1 both logos on the invoice.
2 Q If you look at General Counsel's --
3 MR. TREVETT: Six.
4 BY MS. SELLERS:
5 Q -- 26. Thank you.
6 A I don't have a copy of that in front of me.
7 Q You don't have a copy? I'm sorry.
8 A Not 26. Again, for name recognition for quite some time
9 had still used the Newark Electric stylized logo and fonts as
10 part of -- and we listed as a division of Colacino Industries.
11 Again, as I tried to explain, I tried to have the parent
12 identity be Colacino Industries, Newark Electric would be one
13 of the -- whether it's a separate S corp or a division of, it's
14 a part of Colacino.
15 A So, for some transition period, we used this on all of our
16 -- all of our stationery, if you will.
17 Q So, you're kind of like a d/b/a, you're doing business as.
18 A Yes. Yeah. In fact, in all of the tax returns and
19 paperwork that -- as it relates to BPP Rotenberg (ph.) our
20 accountants, that's the way we've always referred to it as a
21 d/b/a Newark Electric.
22 Q Okay.
23 A But, we kept the logo, the stylized logo, just exactly
24 like it was for name recognition.
25 Q Who is Denise Lafica?

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1 A Denise is one of the girls that works in our office. She
2 does mostly time entry for us, records time off the job cards
3 and put it in the payroll.
4 Q Now, I understand why you haven't changed or why you moved
5 to this Newark Electric Colacino Industries for your public
6 face. What I kind of don't get is why your internal documents
7 still all say Newark Electric on them. For example, if you
8 look from yesterday -- I'll find it for you here -- at General
9 Counsel's 2b, the job card, it just says Newark Electric. Why
10 haven't you switched that over to Colacino Industries?
11 A My father in his infinite wisdom bought cases and cases of
12 these. It's not standard paper. It's like a heavy-weight
13 board paper, so it's a little more durable and rigid out in
14 field.
15 Q Yes.
16 A And, they're all serial numbered. And, they coincide with
17 our sales order system within our Quickbooks enterprise
18 software.
19 Q Mm-hm.
20 A So, this number, it says SN number 26165, that is what we
21 use to reference in our sales order system.
22 Q Okay.
23 A So, we could have and on our next batch of these when we
24 run out, will have --
25 Q In two thousand two --

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1 A There's an abundance of these, I will tell you that.
2 Q Okay. Now, did Newark Electric 2.0 ever get its own logo,
3 letterhead, and set up the way Colacino Industries and Newark
4 Electric have theirs?
5 A It did. It is a stylized text in -- I saw it in one of
6 the documents. I think it might have been twenty -- 26 or --
7 not 6, 27. I saw an invoice that had it. I think that's it
8 right there. Is that a different logo on the top left? Yes.
9 That's it. Newark Electric where it's bold and then, a finer
10 print.
11 Q Mm-hm.
12 A That stylized text was the new generation --
13 MR. TREVETT: Which document are you looking at?
14 MS. SELLERS: We're looking at General Counsel's Exhibit
15 27.
16 MR. TREVETT: Which page?
17 MS. SELLERS: Just the front page.
18 THE WITNESS: The very front page.
19 BY MS. SELLERS:
20 Q So, this -- The first page of GC Ex 27, this Newark
21 Electric, a green power company, that was to be the logo for
22 Newark Electric 2.0?
23 A Right. One of the -- The 2.0 on the end was just to be
24 able to have a unique identity as I formed the corporation. I
25 never really intended on branding Newark Electric 2.0. You

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1 know, some company like 1-800-flowers, or flowers.com. I
2 didn't really anticipate any of 2.0 on all of my branding and
3 marketing.
4 Q Okay.
5 A I just coined that for the purposes of incorporation.
6 Q Okay.
7 A Does that make sense?
8 Q Yes. Is that why you left the phone number the same?
9 A Again, the name recognition to Newark Electric --
10 Q Yes.
11 A -- everybody knows us as Newark Electric and 0410, and
12 there's there or four thousand customers base that was part of
13 the assets I bought from my father.
14 Q Okay. When you bought the assets, we'll call them, from
15 your father, did you also buy -- I know you own your own
16 building. But, did you buy all his supplies and materials --
17 Mr. Blondell testified yesterday that there's this warehouse
18 where you get all your materials.
19 A Yes.
20 Q Which is, you know, beyond my comprehension because I
21 don't do what you do. But, did you buy all that from your
22 father as well?
23 A Yes.
24 Q Okay. And, that warehouse space, was that the same
25 warehouse space as when Newark Electric existed, or --

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1 A No.
2 Q Okay.
3 A I bought the new building and moved into the new building.
4 Q And, you moved all the equipment over.
5 A Everything. Yeah.
6 Q Okay. The vehicles, were those purchased from your
7 father?
8 A Yes. Yeah.
9 Q And, you bought new ones since and added the Newark
10 Electric logo on them?
11 A No. I haven't added the Newark Electric to anything I've
12 bought. All my new vans, right now, are awaiting the new logo
13 design.
14 Q Okay.
15 A All the legacy stuff that I bought from my father --
16 Actually, I misspoke. I misspoke. There have been vans that I
17 bought since 2003, prior to forming Newark Electric 2.0 --
18 Q Right.
19 A -- but under the Colacino -- when I owned Colacino
20 Industries.
21 Q Right.
22 A I had bought vans in the early 2000s, 2004 or 5, those all
23 have the Newark Electric legacy logo like on the job cards,
24 actually, in the picture that you've got.
25 Q Right.

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1 A Since the formation of Newark Electric 2.0 and I would say
 2 in the last three or four years, any new trucks that I bought,
 3 new vehicles, you know, technical services trucks, they're all
 4 logo less right now.
 5 Q Okay.
 6 A They're awaiting for a vehicle wrap from a company in
 7 Buffalo and I just haven't got the new logo to them yet.
 8 Q Okay. And, the new logo would be what is the first page
 9 of General Counsel's Exhibit 27?
 10 A Yes and no. It's going to be a Colacino Industries logo
 11 and it would have any brands beneath that. So, it's one of my
 12 hesitations. I haven't found a good way to do this without
 13 confusing my customers.
 14 Q Okay.
 15 A Because in addition to all of this there's a Colacino
 16 Electric, too.
 17 Q Right.
 18 A That's out there. So, I'm trying to simplify and
 19 streamline this process, hence the trucks are all still plain
 20 white. Newark Electric, the stylized text, would somehow
 21 probably be marketed beneath --
 22 Q The Colacino --
 23 A -- the Colacino logo.
 24 Q And, that's the --
 25 MR. BRENNER: Just for the record, you were referring to

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1 General Counsel 27?
 2 MS. SELLERS: Yes.
 3 BY MS. SELLERS:
 4 Q And, that's the Colacino Industries logo, not the Colacino
 5 Electric logo.
 6 A Correct. Colacino Electric is a company my uncle and his
 7 stepson own.
 8 Q Okay.
 9 A So, that's totally different.
 10 Q Nothing to do with it.
 11 A Nothing to do with it. The Colacino Industries logo as
 12 you see on 27, I've never liked that. I had that created in
 13 2000. I never liked the looks of it. And, so, that's what's
 14 being reinvented -- reworked right now.
 15 Q So, your new van logo will have a new Colacino Industries
 16 logo, hopefully --
 17 A Yeah.
 18 Q -- somehow identifying Newark Electric and might also
 19 identify some other subcompany --
 20 A Could be -- Could be, yeah. My daughter's company or
 21 something.
 22 Q Enviro Systems or something like that.
 23 A Yeah.
 24 Q Okay. So, I know you said some of your new vehicles,
 25 whatever type of vehicles they are, are logo less. But, the

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1 ones that do have a logo all have that logo and looks like what
 2 we saw in General Counsel's Exhibit 19 yesterday; is that
 3 correct?
 4 A No. Actually, this was a generation of truck that was in
 5 the early 2000s.
 6 Q Okay.
 7 A The only vehicle that I can think of that we own that's
 8 newer than this and has a logo, is the one my father drives
 9 which has -- which is a pick-up truck, which has this logo on
 10 it.
 11 Q The Logo from General Counsel's Exhibit --
 12 A Yes.
 13 Q -- 27 that says Newark Electric.
 14 A As a new generation. That's probably, I'm guessing, three
 15 years old.
 16 Q Okay.
 17 A Somewhere around there.
 18 Q But, all the different variations of logos that are on
 19 your vehicles currently say Newark Electric.
 20 A Yeah.
 21 Q Okay.
 22 A Yeah.
 23 Q Unless they're logo less.
 24 A Right.
 25 Q Okay.

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1 A In an effort to try and modernize and streamline this and
 2 not lose the brand, it's proved to be very painful for me, to
 3 be quite honest with you.
 4 If you'll notice too, one other comment I'll make on the
 5 picture --
 6 Q Mr. Colacino, just hold on until I ask my next question.
 7 Okay?
 8 A Okay. All right.
 9 (Pause.)
 10 Q Mr. Colacino, who's Deborah Geary?
 11 A Deborah Geary was an employee for a short period of time.
 12 She did estimating. She is a member of, I believe, 840.
 13 Q Okay. And, when did she work for you?
 14 A I'm going to say 2012.
 15 Q Okay. And, she did estimating? What does that mean?
 16 What's involved with doing estimates?
 17 A She would take a set of plans and blueprints for projects
 18 and cost that project, so we could bid the project. It might
 19 be a waste water treatment plant modification. She would take
 20 those and put pricing to it for me.
 21 Q And, then, would you get involved at that point?
 22 A Generally, I would oversee the numbers that she produced.
 23 Q I'm showing you what is marked as General Counsel's
 24 Exhibit 29. This appears to be an email that Ms. Geary sent to
 25 an administrator on a project, Town of Arcadia DPW project and

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1 you and Ms. Bliss are copied on it; is that correct?
 2 A Yeah.
 3 Q Okay. And, in it she states that you're the primary
 4 contact person at Colacino Industries, but then she gives --
 5 when she copies you on it, she gives your Colacino email
 6 address, but, then, she gives as your contact email address
 7 jcolacino@newarkelectric.com. Is that something that commonly
 8 happens where both addresses were kind of being used at the
 9 same time?
 10 A Generally, no, it's not common. It was probably an error
 11 on her part because if you notice at the top when she copied me
 12 and she used the proper --
 13 Q Right.
 14 A -- proper one.
 15 Q Now, did you email Ms. Mariann and correct her and say,
 16 actually, please contact me at Colacino?
 17 A No. In fact -- While I'm sure I saw this, you know, back
 18 in April 2012, I don't recall this email, so, no, probably not.
 19 MS. SELLERS: Okay. Thanks. I'd like to offer General
 20 Counsel's Exhibit 29.
 21 JUDGE CHU: Any objection?
 22 MR. TREVETT: No objection.
 23 JUDGE CHU: Thank you. Marked and admitted.
 24 (General Counsel's GC-29 identified and received.)
 25 MS. SELLERS: Your Honor, can I just have two minutes?

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1 Q And, again, those remained under your father, but you're
 2 just using them up?
 3 A I don't even know that we use them. If somebody brings in
 4 like an appliance to have somebody put a cord on it, or
 5 something simple, they might use them as repair tickets --
 6 Q Okay.
 7 A -- but we generally don't use those.
 8 Q Okay. But, those are the only kind that would exist,
 9 those carbon copy ones?
 10 A Yeah.
 11 Q Okay. And, you would agree that they all say Newark
 12 Electric on them.
 13 A Yeah. Those are very old documents and I don't think we
 14 use them at all anymore.
 15 Q Now, did Michael Bebernitz ever work for Newark Electric
 16 or Newark Electric 2.0?
 17 A Newark Electric 2.0, I believe he did.
 18 Q Okay. During that short period?
 19 A Yeah.
 20 Q Okay. And, but, does he still work for you? I'm sorry.
 21 A Yes.
 22 Q Okay. And, so, before you signed the letter of assent, he
 23 worked for Colacino Industries, correct?
 24 A Yes.
 25 Q And, he still works for Colacino Industries.

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1 JUDGE CHU: Yes. Let's take a short five-minute break.
 2 MS. SELLERS: Thank you.
 3 (Whereupon, a recess was taken.)
 4 JUDGE CHU: Let's continue with the direct examination of
 5 this witness.
 6 BY MS. SELLERS:
 7 Q So, just to make sure it's clear on the record. It's not
 8 uncommon for a customer to address you guys -- your company,
 9 Colacino Industries as Newark Electric to this day, correct?
 10 A Correct.
 11 Q Okay. And, you agree because of your father's foresight I
 12 guess would be the word, that the job cards for all of 2011 and
 13 all of 2012 have stated Newark Electric at the top. There are
 14 none even to this date -- You haven't used those up, so there's
 15 none to this date that say Colacino Industries on them,
 16 correct?
 17 A Correct. Yeah.
 18 Q Now, the -- There seems to be a couple different types of
 19 invoice sheets in like triplicate form I saw, you know, so that
 20 they go through --
 21 A The carbonless ones?
 22 Q The carbon kind. Yeah.
 23 A Yeah. Those are probably very old.
 24 Q Okay.
 25 A They're probably back pre-2000.

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1 A Yes.
 2 Q I'm going to give you three exhibits, General Counsel's
 3 Exhibits 30, 31 and 32. Now, I have provided you with General
 4 Counsel's Exhibit 30 is what looks like a bill from Lima's
 5 Handy Man Service to Newark Electric, attention your father,
 6 Dick Colacino and, then, if you turn to Page 4 of the document,
 7 the bill was paid by your company, Colacino Industries,
 8 correct?
 9 A Yeah.
 10 Q Okay. And, then, if you look at General Counsel's Exhibit
 11 31, this is a fax from Finger Lakes Developmental Disabilities
 12 Services Office and it's addressed to Newark Electric and if we
 13 turn the page, it's purchase order Colacino Ind. Newark
 14 Electric at your address. And then, if we turn to Page 4, it
 15 has both the Newark Electric and Colacino Industries logos on
 16 it, correct?
 17 A Yeah.
 18 Q Okay. And, then General Counsel's Exhibit 32 is a fax to
 19 Mike Bebernitz, spelled interestingly, at Newark Electric or
 20 Newark Elect from David Bissell at Sodas Point and, then, if we
 21 turn the page, there's an estimate with the Newark Electric and
 22 the Colacino Industries logos on it, correct?
 23 A Yeah.
 24 MS. SELLERS: Okay. I'd like to offer these as examples
 25 of how Newark Electric and Colacino Industries are out to the

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1 public simultaneously as GCs 30, 31 and 32.
 2 MR. TREVETT: Voir dire?
 3 JUDGE CHU: Go ahead.
 4 VOIR DIRE
 5 BY MR. TREVETT:
 6 Q Please look at Exhibit 30. Lima's Handy Man Services.
 7 A Yeah.
 8 Q As you look through these documents, to the best of your
 9 knowledge, are these all business documents of the company?
 10 A Yeah. I would say so.
 11 Q Do these documents all go together as one -- referring to
 12 one transaction here?
 13 A It appears to. Yeah. It's a bill, a resold certificate
 14 and a check made out -- Yeah. Whether we keep them altogether
 15 like this or not, I don't know, but I'm assuming we do.
 16 Q Okay. But, as far as you know, these are true and
 17 accurate and complete set of documents, business documents
 18 pertaining to this transaction from your company?
 19 A To the best of my knowledge. Yes.
 20 MR. TREVETT: No objection to 30.
 21 BY MR. TREVETT:
 22 Q Thirty-one, the fax cover sheet from Finger Lakes DDS,
 23 this is -- as far as you know, is this the complete document
 24 that would have been received by your company?
 25 A Yes.

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1 A I do not. No, I do not. I assume it's Dave Bissell's.
 2 Q Well, from the content of that handwriting, does it appear
 3 to pertain to this estimate and this document, as far as you
 4 can tell?
 5 A I'm sorry. Say that again?
 6 Q The handwritten information, does it appear to be --
 7 pertain to this document, this estimate?
 8 A Yes.
 9 MR. TREVETT: No objection to 31 -- 32.
 10 JUDGE CHU: Thank you, counsel. Marked and admitted into
 11 the record 30, 31 and 32.
 12 (General Counsel's GC-30, GC-31 and GC-32 identified and
 13 received.)
 14 BY MS. SELLERS:
 15 Q Mr. Colacino, in -- There came a time when you decided to
 16 terminate the letter of assent for Colacino Industries,
 17 correct, the July 20th letter of assent?
 18 A Yes.
 19 Q Okay. Do you remember when that was?
 20 A I know it was a decision that didn't come quickly. I
 21 would say very near that date, very near that date.
 22 Q Very near July 20th?
 23 A Yeah.
 24 Q That's the day you signed the letter of assent. Do you
 25 mean almost as soon as you signed it you decided to terminate

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1 Q And, do you recall this transaction? Is this a
 2 transaction that your company entered into?
 3 A No. It probably was all handled by Mike Beberntz, if I
 4 had to guess.
 5 Q Okay.
 6 A Just by the type of work it is.
 7 Q Okay. This is -- This is a business record of your
 8 company though.
 9 A Yeah. I believe so.
 10 Q That's what I was getting at.
 11 A Yeah.
 12 Q And, is it a -- As far as you can tell, is it a complete
 13 record, there's no pages, no other information missing --
 14 A Correct.
 15 Q -- or altered?
 16 MR. TREVETT: I guess on that basis, no objection to 31.
 17 BY MR. TREVETT:
 18 Q Thirty-two, the fax from Newark -- I'm sorry -- Sodus
 19 Point Village --
 20 A Yeah.
 21 Q -- again this estimate, does that document look to be a
 22 true and accurate record -- business records?
 23 A Yes. I believe so.
 24 Q Okay. Do you recognize the handwriting on the second
 25 page?

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1 it?
 2 A Let me see if I understand you right.
 3 Q You signed the letter of assent on July 20th.
 4 A 2011.
 5 Q Yes.
 6 A Close to the one year anniversary of that.
 7 Q Okay.
 8 A I'm sorry.
 9 Q That's fine. When you decided to terminate your
 10 relationship with Local 840, how did you know how to do that?
 11 A I don't know that I did. I had a gentleman working for us
 12 at the time as our CFC, a gentleman by the name of Kevin Groff.
 13 I had him take the letters of assent, read through them, look
 14 at what's necessary, how to go about it, just to make sure that
 15 as I understood it, we had to be in six months, but we had up
 16 until 12 months to submit -- a period between six and 12 months
 17 to opt out.
 18 Q Okay.
 19 A That there would be no recourse should we -- If the
 20 relationship didn't work based on my conversations with Mike.
 21 There was a trial period for both entities. If it works,
 22 great. If it doesn't, no hard feelings and we'd go separate
 23 directions. And, in my conversations with Mike, he had said it
 24 was a simple as that, you could give it a try, if it works,
 25 great, if it doesn't, give us 30 days notice and that's that.

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